

United States

Circuit Court of Appeals

For the Ninth Circuit.

THOR W. HENRICKSEN, formerly Acting Collector of Internal Revenue for the District of Washington, and CLARK SQUIRE, Collector of Internal Revenue for the District of Washington,

Appellants,

vs.

BAKER-BOYER NATIONAL BANK, a corporation, Executor of the Estate of George T. Welch, deceased,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington
Southern Division

FILED

JUL 31 1943

PAUL P. O'BRIEN, CLE

No. 10409

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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[1*]

In the District Court of the United States for the
Western District of Washington Southern
Division.

No. 267

BAKER-BOYER NATIONAL BANK, a corpora-
tion, executor of the estate of GEORGE T.
WELSH, deceased,

Plaintiff,

vs.

THOR W. HENRICKSEN, formerly acting Col-
lector of Internal Revenue for the District of
Washington; and CLARK SQUIRE, Collector
of Internal Revenue for the District of Wash-
ington;

Defendants.

COMPLAINT

Comes now the Plaintiff and for cause of action
against the Defendant Alleges:

I.

That the Plaintiff is and at all times herein men-
tioned was a national banking corporation char-
tered and authorized to engage in business under
the laws of the United States, with its principal
place of business at Walla Walla, Washington; and
authorized under the laws of the State of Wash-
ington to act as executor.

II.

That Defendant Thor W. Henricksen is a resi-
dent of the above entitled district and at all times

from the 11th day of July, 1936 to and including the 5th day of March, 1941, was acting Collector of Internal Revenue of the United States for the District of Washington; that on the 6th day of March, 1941, the Defendant Clark Squire was appointed Collector of Internal Revenue for said district and at all times since has been and is now such Collector, and that the said Clark Squire at all times since has been and is now a resident of the above entitled district, and maintains an office therein. [2]

III.

That the said George T. Welch, now deceased, did show, and the Plaintiff and its officer have shown true faith and allegiance to the Government of the United States, and that the decedent did not, and the Plaintiff and its officers have not, in any way aided, abetted or given encouragement or comfort to any person or persons or government in rebellion against the Government of the United States, nor did the decedent or nor has the Plaintiff or any of its officers aided, abetted or given encouragement or comfort to any sovereign government which is or has been at war with the United States.

IV.

That on April 15, 1937, the said George T. Welch died at Walla Walla, Washington; that he was survived by his widow, Carrie Welch, of Walla Walla, Washington, who was born on December 4, 1849; by his son, Fred Welch, who was born on June 28, 1880, and also by a grandson, George Allen, who was born on August 11, 1907.

V.

That the said George T. Welch and Carrie Welch were married and lived together as husband and wife for more than fifty years and until the day of his death; that all of the personal, real and mixed property, which belonged to him at the time of his death, was community property; that all of said community property belonging to said George T. Welch on April 15, 1937, was located entirely within the State of Washington.

VI.

That when George T. Welch died, he left what is designated under the laws of the State of Washington, a non-intervention will and Codicil, a copy of which are attached hereto and marked Exhibit "A" and made a part of this complaint by reference as completely as if set forth in full herein; that the said Will and Codicil were admitted to probate by the Superior Court of the State [3] of Washington, in and for *Walla* County, as the last will and testament of said George T. Welch on the 20th day of April, 1937; that on said 20th day of April, the said Baker-Boyer National Bank plaintiff herein was duly appointed executor of said estate and qualified as such and at all times since the said 20th day of April has been and is now the duly qualified and acting executor of said estate; that said court authorized said bank to execute said will and codicil.

VII.

That the widow Carrie Welch has a life estate under the provisions of said Will, with no power *in*

invade the corpus of said estate, and that the bequests to remaindermen, for religious, educational, scientific and charitable purposes in said Will are certain and fixed in amount; that the Superior Court of said Walla Walla County correctly interpreted the Will to the effect that the widow has no power to invade the corpus; that said estate was distributed pursuant to the order of said probate court and that said Carrie Welch has at no time received from her life estate more than the income; that her expenditures do not equal the income from her separate estate; and that the corpus remains intact in the hands of the plaintiff as trustee;

VIII.

That an estate tax return for said estate filed by the said executor with the said acting collector showed a gross valuation of \$226,303.96 and a net valuation of \$7,325.42 for estate tax purposes; that the original estate tax shown on said return and paid by the plaintiff was \$146.50; that the said executor took as deductions in said return all bequests for religious, charitable, scientific and educational purposes, namely to-wit:

(a) a bequest of \$12,500.00 to the Board of Conference Claimants Inc. of the Pacific Annual Conference of the Methodist [4] Episcopal Church, subject to the life estate of the widow and the grandson of said decedent, to be used by said Board for the maintenance and support of retired ministers of said denomination;

(b) a bequest of \$159,035.74 residue, subject, to the life estate of the widow of said decedent, to

the Baker-Boyer National Bank as trustee for the relief of aged, indigent and poor, and the maintenance of the sick and maimed and for the construction and maintenance of a memorial hospital and home for them at Walla Walla, Washintgon, and for the support and education of worthy boys and girls of Walla Walla County.

IX.

That the office of the internal revenue agent in charge at Seattle, Washington, proposed to raise the gross valuation of the estate to \$228,244.50 and also increase the net estate to \$180,301.68 by the disallowance of the forementioned bequests thereby increasing the estate tax \$21,417.55 over the \$146.50 already paid; that the additional tax of \$21,417.55 was paid with interest to the said acting collector in this manner to-wit:

Date of Payment	Tax Paid	Interest Paid
Nov. 1, 1939.....	\$ 7,843.29	\$ 609.17
Jan. 9, 1940.....	13,574.26	1,209.56
	<hr/>	<hr/>
Total.....	\$21,417.55	\$ 1,818.73

that the aforesaid additional tax was paid upon the understanding that the payment thereof would not prejudice the right of the plaintiff to file a claim for refund of all payment of estate tax and interest made to the said action collector; that on the 30th day of April, 1940, the plaintiff filed with the defendant Thor W. Henricksen, as such acting collector, claim for refund of said amounts so paid, a copy of which claim, marked Exhibit "B" is attached hereto and made a part hereof by this ref-

erence for all purposes; that on or about the 17th day of April, 1941, plaintiff received notice of rejection of said claim, a copy of which notice [5] marked Exhibit "C", is hereto attached, and by this reference made a part hereof for all purposes;

X.

That on or about the 15th day of March, 1941, the Commissioner of Internal Revenue assessed further additional tax against the plaintiff in the amount of \$998.57, resulting from disallowance of part of credit for Inheritance Tax paid the State of Washington, of which assessment plaintiff was notified by letter received on or about the 19th day of March, 1941, after the assessment was made, a copy of which letter is hereto attached, marked Exhibit "D" and by this reference made a part hereof; that on the 25th day of April, 1941, the plaintiff paid said additional assessment to said defendant Clark Squire, as Collector of Internal Revenue, together with interest thereon in the amount of \$159.77, making a total payment of \$1158.34; that the plaintiff was deprived of the right of appeal to the Board of Tax Appeals by reason of the fact that the assessment was made without notice.

XI.

That on the 9th day of May, 1941, the plaintiff filed with the defendant Clark Squire, as such Collector, a supplemental claim for refund in the amount of \$24,401.25 plus interest, a copy of which claim, marked Exhibit "E", is hereto attached and by this reference made a part hereof; that on the

11th day of July, 1941, plaintiff received notice of rejection of said claim, a copy of which notice is hereto attached, marked Exhibit "F" and by this reference is made a part hereof.

XII.

That all the actions of the defendants were performed by them as officers of the Government of the United States, under rules and instructions of the Commissioner of Internal Revenue; and that all moneys collected by them as aforesaid from the plaintiff was paid by them to the Treasury of the United States. [6]

Wherefore plaintiff prays for judgment as follows:

1. Against the defendant Thor W. Henriksen in the sum of \$8,452.46 with interest thereon from the first day of November, 1939, at the rate of 6% per annum until paid; and in the further sum of \$14,783.82 with interest thereon from the 9th day of January, 1940, at the rate of 6% per annum until paid;
2. Against the defendant Clark Squire in the sum of \$1158.34 with interest thereon from the 25th day of April, 1941, at the rate of 6% per annum until paid;
3. Against the defendants and each of them for plaintiff's costs and disbursements herein.

(Sgd)

BURNS POE

Attorney for Plaintiff

Address: 1211 Puget Sound
Bank Building,
Tacoma, Wash. [7]

EXHIBIT A

Know All Men By These Presents, That I, George T. Welch, the husband of Carrie Welch, residing in the city and county of Walla Walla, State of Washington, and being desirous of making certain changes in my Last Will and Testament, heretofore and on the 16th day of September, 1930, made, published and declared, do hereby Make, Publish, and Declare this to be my Codicil thereto, that is to say:

I.

I do hereby revoke Paragraph "III" of my said Last Will and Testament.

II.

I do hereby revoke so much of Paragraph "VII" of my said Last Will and Testament as directs my Trustee, the Baker-Boyer National Bank, of Walla Walla, Washington, conditioned as therein provided, to convey, transfer, set over and deliver the principal of said trust fund, to-wit, the sum of thirty Thousand (\$30,000.00) Dollars, with any then remaining unused net income, if any there be, to the Walla Walla Valley Hospital Association, commonly known as the Walla Walla Valley General Hospital, and I do hereby direct that the said Walla Walla Valley Hospital Association, or its successor in interest, shall in no event participate in or receive any portion of the principal of said trust fund, or any income therefrom, if any of there be, and in lieu thereof, but subject, however, to all the rights and benefits therein conferred upon my said wife,

Exhibit A—(Continued)

Carrie Welch, and my son, Fred B. Welch, or either of them, I do hereby give and bequeath the principal of said trust fund, with any remaining unused net income therefrom, if any there be, conditioned as above, unto my said Trustee, the Baker-Boyer National Bank, of Walla Walla, Washington, in trust, nevertheless, to be by it used and expended for the relief and support of the poor people, maintenance of the sick or maimed, irrespective of their nationality or religious beliefs or creeds, who may be deemed worthy, and with [8] especial reference to such of them as may be living in the States of Washington and Oregon, and particularly in the County of Walla Walla, Washington, or territory tributary thereto, as provided for in subdivision (b) of Paragraph "IX" of my said Last Will and Testament, and that said Paragraph "VII" in all other respects be and remain in full force and effect and as therein set forth and provided.

In Witness Whereof, I have hereunto set my hand and seal this 19th day of September, 1931.

[Seal]

GEORGE T. WELCH

The foregoing typewritten instrument was, at the date hereof, signed, sealed and published by the said George T. Welch, and by him declared to be a Codicil to his aforesaid Last Will and Testament of date September 16, 1930, to which this instrument is attached, in the presence of us, who, at his request and in his presence and in the presence of

Exhibit A—(Continued)

each other, have subscribed our names as witnesses thereto this 19th day of September, 1931.

GRACE McGUIRE,

Residing at Walla Walla,
Washington.

MARVIN EVANS,

Residing at Walla Walla,
Washington. [9]

Know All Men By These Presents, That I, George T. Welch, the husband of Carrie Welch, residing in the city and county of Walla Walla, State of Washington, do hereby Make, Publish and Declare the following as and for my Last Will And Testament, hereby revoking any and all former Wills by me made:

I.

I do hereby declare that all the estate of which I am possessed or claim any interest therein belongs to the community consisting of my said wife, Carrie Welch, and myself.

II.

I do hereby direct that all my just debts be first paid and discharged, including the expenses of my last sickness and burial, as soon as there are funds available therefor.

III.

I do hereby give and bequeath unto the Walla Walla Valley Hospital Association, commonly

Exhibit A—(Continued)

known as the Walla Walla Valley General Hospital, located at Walla Walla, Washington, the sum of Thirty Thousand (\$30,000.00) Dollars in cash, or the equivalent in value thereof in securities found in my estate, to be by it used as in its judgment is proper for the furtherance of its objects as a charitable organization.

IV.

I do hereby give and bequeath unto my esteemed friend, Tena Zuest, and who is now living in my home in the city of Walla Walla, Washington, the sum of Five Hundred (\$500.00) Dollars, and unto my esteemed friend, Mrs. Clara Pitt, now residing at Oakland, California, the sum of Five Hundred (\$500.00) Dollars.

V.

I do hereby give, devise and bequeath unto my said wife, Carrie Welch, for and during her life time, should she survive me, all the rest, residue and remainder of my estate, both real and personal, including the rents, issues and profits therefrom, [10] and of whatsoever the same may consist and wheresoever situated, with the distinct understanding that no limitation is placed on my said wife in any expenditures which she may make for any purpose, or any accounting be made thereof, with the then remainder over upon her death unto my Trustee, hereinafter named, in trust, nevertheless, for the uses and purposes hereinafter mentioned, and more particularly set forth, save and

Exhibit A—(Continued)

except my community undivided one-half interest in certain lands hereinafter described, which I hereinafter give and devise unto my son, Fred B. Welch, freed from any trust provision of my Will; but should I survive my said wife, Carrie Welch, then upon my death I do hereby give, devise and bequeath all the then rest, residue and remainder of my estate, both real and personal, including the rents, issues and profits therefrom and of whatsoever the same may consist and wheresoever situated, unto my said Trustee hereinafter named, in trust nevertheless, for the uses and purposes hereinafter set forth, save and except my community undivided one-half interest in certain lands and premises which I hereinafter give and devise unto my said son, Fred B. Welch, freed from any trust provision of my Will as aforesaid.

VI.

Subject to the life estate hereinbefore given, devised and bequeath unto my said wife, Carrie Welch, should she survive me, as aforesaid, I do hereby give and devise my community undivided one-half interest in and to the following described lands and premises situated, lying and being in the county of Walla Walla, State of Washington, to-wit:

Beginning at a point on the East line of Section 33, in Township 7 North, of Range 34 East of the Willamette Meridian, which is 10 chains North of the quarter corner on the East side of said Sec-

Exhibit A—(Continued)

tion 33; thence North on the East line of said Section 33 and the East line of Section 28, said Township and Range, to a point in the East line of said Section 28, which is 50 feet South of the center line of the main tract of the Walla Walla and Columbia River Railroad (Oregon Railroad and Navigation Company) measured on a line drawn at right angles to said center line; thence westerly on a line drawn parallel to and distant 50 feet Southerly from said center [11] line of said railroad, to a point in the North and South center line of said Section 28 thence South and on said center line of said Section 28 and the center line of Section 33 aforesaid, to a point in said center line of Section 33, which is 10 chains North of the center point of said Section 33; thence East 39.32 chains to the point of beginning.

Also

Beginning at a point in the North line of the Louis Dauncy Donation Claim, which is 60 feet West of the point of intersection of said North line with the North and South center line of Section 28, Tp. 7 N. R. 34, E. W. M.; thence West 4.50 chains; thence South 14.95 chains; thence North $72^{\circ} 20'$ West 8.34 chains thence South 7.42 chains, to the Walla Walla River; thence following the meanderings of said River in a general Easterly direction, and along its north bank as follows:— N. $56^{\circ} 29'$ E. 2.07 chains; N. $83^{\circ} 24'$ E. 2.49 chains; thence S. $36^{\circ} 54'$ E. 1.50 chains; thence S. $10^{\circ} 06'$ E. 4.32 chains; thence S. $76^{\circ} 12'$ E. 1.19 chains; thence N.

Exhibit A—(Continued)

20° 23' E. 7.40 chains; thence N. 75° 13' E. to a point on the North bank of said River which is 60 feet West of said North and South center line of Section 26, measured on a line at right angles thereto; thence North 18.35 chains to the point of beginning.

Together with all easements, rights of way, water and water rights thereunto belonging or appurtenant to the lands and premises above described.

Said Louis Dauncy Donation Claim begin Claim No. 38, according to the Official Plat thereof in the office of the Surveyor General of the United States and being parts of Sections 28, 29, 32, and 33 in Township seven (7) North, of Range thirty-four (34) East of the Willamette Meridian.

Excepting, however, therefrom the tract of land 400 feet east and west by 200 feet north and south heretofore conveyed to E. C. Burlingame by deed of record at page 94 of Volume 155 of Deeds in the office of the County Auditor of Walla Walla County, Washington, and, by reference, the description therein contained being made a part hereof, unto my said son, Fred B. Welch, as his absolute estate; but should I survive my said wife, Carrie Welch, then upon my death I do hereby give, devise and bequeath the same unto my said son, Fred B. Welch, as his absolute estate.

VII.

Subject to the life estate hereinbefore given, devised and bequeath unto my said wife, Carrie

Exhibit A—(Continued)

Welch, in my estate, should she survive me as aforesaid, do hereby give and bequeath to my said Trustee, the Baker-Boyer National Bank, of Walla Walla, Washington, the sum of Thirty Thousand (\$30,000.00) Dollars in cash, or the equivalent in value thereof in securities found in my estate, in trust, nevertheless, during the time and for the purpose hereinafter set forth.

To hold, manage, invest and reinvest the principal and surplus [12] income, if any, in securities prescribed by the Statutes of the State of Washington now or hereafter in force as legal investments for trust funds, and to collect and receive interest and income accruing thereon, and after deducting from such income all proper charges and expenses incident to the management and execution of this trust, and including in addition thereto a compensation for its services as Trustee, which compensation shall be computed on the following basis; one half of one per cent per annum of the value of said trust for all services incidental to the collection and distribution of income and the collection and reinvestment of all principal sums, to pay over semi-annually, or oftener, in its discretion, the net income arising therefrom to my said son, Fred B. Welch, should he survive me, for and during his life time so long as he can personally use and enjoy the same, conditioned as hereinafter provided, with the remainder over upon his death, at which time I direct my said trustee to convey, transfer, set over and deliver the principal of said trust fund, with any then remain-

Exhibit A—(Continued)

ing unused net income, if any there be after his death and burial, to the Walla Walla Valley Hospital Association, commonly known as the Walla Walla General Hospital located at Walla Walla, Washington, to be by it used as in its judgment is proper, for the furtherance of its objects as a charitable organization; but should I survive him, my said son, and subject to the life estate of my said wife, Carrie Welch, should she survive me, as aforesaid, I do hereby give and bequeath the same direct and independent of said trust to the said Walla Walla Valley Hospital Association, to be by it used as in its judgment is proper, for the furtherance of its objects as a charitable organization. The provision hereinbefore made for my said son, Fred B. Welch, so long as he may live, should he survive me, is upon the express condition, however, that he be and he is hereby restrained from and is and shall be without right, power or authority to sell, transfer, pledge, mortgage, hypothecate, alienate, anticipate or in any other manner affect or impair his beneficial and legal right, title, interest, claim and estate in [13] and to the income of this trust during his life time, nor shall his right, title, interest and estate be subject to the rights or claims of creditors, nor subject nor liable to any process of law or court and all of the net income of this trust shall be transferable, payable and deliverable only, solely, exclusively and personally to him at the time or times he is entitled to take the same under the terms of this trust, and his personal receipt shall be a condition precedent

Exhibit A—(Continued)

to the payment or delivery of the same by said Trustee to him, and if by reason of bankruptcy or insolvency or any other means whatsoever said net income or any part thereof could no longer be personally enjoyed by him, my said son, but that the same or any part thereof would become vested in or payable to some other person, corporate body, or otherwise than my said son, then such portions of said net income as would so vest in him shall immediately and absolutely cease and determine as the case may be, and the same remain vested and in the possession of my said Trustee, in trust, and accumulate in the augmentation of the principal of my estate; and in case after the cessation of such net income or any portion thereof for either of the above causes as to my said son, it shall be lawful, nevertheless, for my said Trustee, in its discretion, to pay or apply for the use of my said son so much and such part of said net income as my said trustee may see fit, to which he would have been entitled under the foregoing trust provision in case the forfeiture hereinbefore provided for had not happened. The foregoing limitations are made in order that my said son may be provided for so long as he may live and the legitimate user of such net income will suffice for this purpose, and for the further reason that such net income may at all times be kept free from liability from any debts or other obligations then or thereafter contracted or suffered to exist by him.

Exhibit A—(Continued)

VIII.

Subject to the life estate hereinbefore given, devised and [14] bequeathed unto my said wife, Carrie Welch, in my estate, should she survive me as aforesaid, I do hereby give and bequeath to the Baker-Boyer National Bank, of Walla Walla, Washington, the sum of Twelve Thousand Five Hundred (\$12,500.00) Dollars, in cash, or the equivalent in value thereof in securities found in my estate, in trust, nevertheless, during the time and for the purposes hereinafter set forth:

To hold, manage, invest and reinvest the same, including the surplus income, if any, in securities prescribed by the Statutes of the State of Washington now or hereafter in force as legal investments for trust funds, and to collect and receive interest and income accruing thereon, and after deducting from such income all proper charges and expenses incident to the management and execution of this trust, and including in addition thereto a compensation for its services as Trustee, which compensation shall be computed on the following basis: one-half of one per cent per annum of the principal of said trust for all services incidental to the collection and distribution of income and the collection and reinvestment of all principal sums, and to pay over semi-annually, or oftener, in its discretion, the net income, from time to time, arising therefrom to my grandson, George B. Allen, should he survive me, for and during his life time, so long as he can personally use and enjoy the same, conditioned as here-

Exhibit A—(Continued)

inafter provided, with the remainder over upon his death, at which time I direct my said Trustee to convey, transfer, pay over and deliver the principal of said trust fund, with any then remaining unused net income, if any there by after his death and burial, to the Board of Conference Claimants, Inc. of the Pacific Northwest Annual Conference, Methodist Episcopal Church, now having its offices in Seattle, Washington, to be by it used for the maintenance and support of the retired ministers of said denomination; but should I survive him, my said grandson, and subject to the life estate of my said wife, Carrie Welch, should she [15] survive me as aforesaid, I do hereby give and bequeath the same direct and independent of said trust to the said Board of Conference Claimants, Inc. of the Pacific Northwest Annual Conference, Methodist Episcopal Church, now having its offices in Seattle, Washington, to be by it used for the maintenance and support of the retired ministers of said denomination. The provision hereinbefore made for my said grandson, George B. Allen, so long as he may live, should he survive me, is upon the express condition, however, that he be and he is hereby restrained from and is and shall be without right, power or authority to sell, transfer, pledge, mortgage, hypothecate, alienate, anticipate or in any other manner affect or impair his beneficial and legal right, title, interest, claim and estate in and to the income of this trust during his life time, nor shall his right, title, interest and estate be subject

Exhibit A—(Continued)

to the rights or claims of creditors, nor subject nor liable to any process of law or court, and all of the net income of this trust shall be transferable, payable and deliverable only, solely, exclusively and personally to him at the time or times he is entitled to take the same under the terms of this trust, and his personal receipt shall be a condition precedent to the payment or delivery of the same by said Trustee to him, and if by reason of bankruptcy or insolvency or any other means whatsoever said net income or any part thereof could no longer be personally enjoyed by him, my said grandson, but that the same or any part thereof would become vested in or payable to some other person, corporate body, or otherwise than my said grandson, then such portions of said net income as would so vest in him shall immediately and absolutely cease and determine as the case may be, and the same remain vested and in the possession of my said Trustee, in trust, and accumulate in the augmentation of the principal of my estate; and in case after the cessation of such net income or any portion thereof for either of the above causes as to my said grandson, it shall be lawful, nevertheless, for my said Trustee, in its discretion, to pay [16] or apply for the use of my said grandson so much and such part of said net income as my said Trustee may see fit, to which he would have been entitled under the foregoing trust provision in case the forfeiture hereinbefore provided for had not happened. The foregoing limitations are made in order that my said grandson may be pro-

Exhibit A—(Continued)

vided for so long as he may live and the legitimate user of such net income will suffice for this purpose, and for the further reason that such net income may at all times be kept free from liability from any debts or other obligations then or thereafter contracted or suffered to exist by him.

IX.

Subject to each and every of the foregoing provisions of this my Last Will and Testament, including the life estate in my said estate hereinbefore given, devised and bequeathed unto my said wife, Carrie Welch, should she survive me, I do hereby give, devise and bequeath all the rest, residue and remainder of my property and not hereinbefore given, devised and bequeathed, and whether real, personal or mixed, and of whatsoever it may consist, and of whatsoever character and kind, and wheresoever situated, including any prior legacies that may lapse, fail or be ineffective for any reason whatsoever, unto my said Trustee, the Baker-Boyer National Bank, of Walla Walla, Washington, To Have and To Hold The same, together with all the privileges and appurtenances thereunto belonging, and all income and profits arising therefrom, to my said Trustee, perpetually, intrust, nevertheless, for the uses and purposes hereinafter set forth:

(a) My said Trustee is hereby directed to take out of my trust estate, from time to time, as the demand therefor seems adviseable to my said Trustee, such sums of money, either out of the principal or

Exhibit A—(Continued)

out of the net income accrued or accruing therefrom for the creation of a "Revolving Fund" to be by it used either as a loan or a gift, as in its judgment is proper, for the support or education, or both, [17] of worthy boys and girls, (irrespective of age), nationality or religious beliefs or creeds, said boys and girls to be selected by my said Trustee or by a committee of two, consisting of the President of Whitman College, located at Walla, Walla, Washington, and the Superintendent of School District No. 1, in the city of Walla Walla, Washington, said committee selection of any such boy or girl to be, however, subject to the approval of my said Trustee, My said Trustee shall be and it is hereby given full power and authority over said trust fund and the handling and disposition thereof, or of the net income therefrom, and to do any and all acts and things of any kind whatsoever requisite and necessary to carry out the purposes of said "Revolving Fund"; it being understood that my said Trustee shall not be liable for any losses that may occur in the administration and disposition of said "Revolving Fund", but it is expected to use diligence in the carrying out of its purposes.

(b) Out of my trust estate my said Trustee is hereby authorized and directed to use and expend so much of the net income therefrom as in its discretion it may deem necessary, depending upon the needs and demands therefor, for the relief and support of the aged, indigent and poor people, maintenance of the sick or maimed, irrespective of their

Exhibit A—(Continued)

nationality or religious beliefs or creeds, who may be deemed worthy, and with especial reference to such of them as may be living in the States of Washington and Oregon, and particularly in the County of Walla Walla, Washington, or territory tributary thereto, such persons to receive such benefits to be first selected by my said Trustee, or a committee of three, to be appointed from time to time by my said Trustee, said committee selection of any such person to be, however, subject to the approval of my said Trustee My said Trustee shall make all the arrangements, by it deemed necessary, for the support, care and relief of all such persons so selected, and the place of places where such aged, indigent or poor people [18] are from time to time to be kept, or where such sick or maimed may receive treatments, but preferably in some place or places of its selection in the city of county of Walla Walla, Washington, where I have lived the major portion of my life and where I am most concerned and where most of my estate has been created.

(c) My said Trustee, however, is advised, and for this purpose it is hereby authorized and fully empowered, if in its judgment the condition of my estate will warrant it, and local conditions are in need of same, to expend out of the principal and/or cut out of the net income of my trust estate amounts sufficient to erect or assist in the erection of a building in the city of Walla Walla, or in the vicinity thereof, as a memorial to my said wife, Carrie Welch, and myself, said building to be used as a

Exhibit A—(Continued)

home for aged people. Provided that in the said home building such aged people are entitled to admission therein irrespective of their nationality or religious beliefs or creeds, the cost and kind of said building and its upkeep to be left to the discretion of my said Trustee, other than the the exterior thereof shall not be of wood construction.

(d) If there is remaining any unused income from my estate for any of the purposes aforesaid, my said Trustee is authorized and fully empowered to use the same for such other charitable uses and purposes, as it, in its discretion, may see fit to employe the same.

(e) If any of the institutions hereinbefore mentioned to participate in the benefits of my trust estate cease to exist or function, or in the event of the merger, re-organization, consolidation or transfer of the same, which will affect a change of identity, then any successor or successors thereto shall be eligible at the discretion of my said Trustee to participate in my trust estate to the same extent as hereinbefore provided.

And to more effecutally administer and carry into effect the uses and purposes hereinbefore set forth; my said Trustee shall be and it is hereby authorized and fully empowered: [19]

(a) To hold, maintain and indefinitely retain, so long as it believes it is advisable so to do, in which it shall be the sole judge thereof, the identical securities, properties, or investments received by it from my estate, whether it be at my

Exhibit A—(Continued)

death or at the death of my said wife, Carrie Welch, should she survive me.

(b) To grant, bargain, sell, exchange, convert and lease, and when it shall be deemed necessary and in the discretion of my said Trustee for the benefit of the trust so to do, to pledge, assign, partition, subdivide and distribute, either or both, the income and principal of my said trust estate, and for this purpose to execute any and all instruments, whether under seal or otherwise whatsoever requisite and necessary therefor.

(c) To receive and collect all income and principal, invest and re-invest the principal and surplus income, if any, in securities prescribed by the Statutes of the State of Washington, now or hereafter in force as legal investments for trust funds. In the management of this trust estate my said Trustee is requested to look primarily to the safety of principal rather than high yield in the investment of the funds of this trust.

(d) To pay all taxes and assessments of every character, including any state or federal estate taxes, fees and expenses necessarily incurred in the administration of this trust, including court costs in the event of any litigation pertaining to this trust, and any attorney's fees or other fees or costs incident thereto, together with a reasonable fee for said Trustee, which it is agreed shall be as follows: For all usual and ordinary duties as Trustee hereunder an annual fee equal to one-half of one per cent on the principal amount of this trust.

Exhibit A—(Continued)

(e) My said Trustee shall not be liable for the keeping of funds invested in full at all times, but it shall use diligence so to do, or for losses which may occur in the administration of this trust, but it is expected to exercise due care and caution in its adminis- [20] tration of said trust, but it is expected to exercise due care and caution in its administration of said trust.

(f) In the event an emergency arises that requires my Trustee to borrow funds temporarily, my said Trustee may advance its own funds to the trust estate, each and all of such loans or advances are to bear interest at prevailing rates and shall first be repaid out of both income and principal of the trust estate.

(g) My said Trustee is vested with sole discretion and power to determine what shall constitute principal of the trust estate and what shall constitute gross income therefrom or net income available under the terms of this trust.

(h) and in general way my said Trustee is hereby give full power and authority to do any and all acts or things of any kind whatsoever requisite and necessary to carry out the terms of this trust without reference to or the order of any court or courts whatsoever, and to the same extent as I could do if personally present.

X.

Should either my said son, Fred B. Welch, or my said grandson, George B. Allen, or both of

Exhibit A—(Continued)

them, object to the probate of this Will, or in any way directly or indirectly contest or aid in the contest of the same, or of any of its provisions made for their use and benefit as herein provided, then in such event they, or either of them, so contesting, shall be absolutely barred and cut off from receiving any share or portion of my estate, and the share or portion of my estate which would have been paid or distributed to such one so contesting shall be paid and distributed to the aforesaid the Baker-Boyer National Bank in trust, nevertheless to be by it administered, and/or in its discretion, in which it shall be the sole judge thereof, for the use and benefit of any of the residuary beneficiaries of my estate. [21]

XI.

In the event of a merger, reorganization or consolidation of my said trustee which will affect a change of identity of the corporate name of said trustee, then any successor to said trustee shall continue hereunder with full authority and with like powers as herein granted to said Baker-Boyer National Bank, of Walla Walla, Washington, as original trustee herein.

XII.

In order that my said wife, Carrie Welch, may be relieved of the responsibility in the administration upon my estate, and the responsibilities incident thereto, I do hereby Nominate and Appoint my said Trustee, the Baker-Boyer Nation Bank, of Walla Walla, Washington, the Executor of this

Exhibit A—(Continued)

my Last Will and Testament, to serve as such without bonds or other security being required of it in the execution of its said trust, and that in the management of my said estate it act according to its own judgment, but in so doing I request that it keep my said wife, from time to time, advised as to the condition of my estate; that Letters Testamentary or of administration shall not be required of it except to admit this Will to probate and to file a true inventory of all the property of my estate and the giving notice to creditors in the manner require by law; that it, while serving as such executor, shall be and it is hereby fully authorized and empowered to lease or sell all or any part of my estate, real and personal, upon such terms and at such price or prices, as in its judgment is proper, without the necessity of applying to any court or any order of any court so to do, and without the necessity of reporting any such sale to any court or of obtaining an order of confirmation thereof from any court, and for such purpose to execute any and all instruments whatsoever requisite and necessary therefor, to the same extent as I could do if living, and that in so far as by law in any case can be done it shall be relieved from the supervision and control [22] of all courts, answering only to the tribunal of its own conscience for fidelity in its said office.

Exhibit A—(Continued)

In Witness Whereof, I have hereunto set my hand and seal this 16th day of September, 1930.

[Seal] GEORGE T. WELCH

The foregoing typewritten instrument written on the thirteen preceding pages attached hereto and made a part hereof, was, at the date hereof, signed, sealed and published by the said George T. Welch, the Testator herein, and by him declared to be his Last Will and Testament, in the presence of us, who, in his presence, and at his request, and in the presence of each other, have hereunto subscribed our names as witnesses hereto this 16th day of September, 1930.

GRACE McGUIRE,

Residing at Walla Walla,
Washington.

MARVIN EVANS,

Residing at Walla Walla,
Washington.

EXHIBIT B

Claim

To be Filed With the Collector Where
Assessment Was Made or Tax Paid

Collector's Stamp
(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- Refund of Tax Illegally Collected.
- Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- Abatement of Tax Assessed (not applicable to estate or income taxes).

State of Washington,
 County of Walla Walla—ss.

Type
 or
 Print.

Name of taxpayer or purchaser of stamps
 Baker-Boyer National Bank of Walla Walla, as
 executor of the estate of George T. Welch, de-
 ceased

Business address Baker Bldg. (Street) Walla
 Walla (City) Washington (State)

Residence Baker Bldg. Walla Walla Wash-
 ington

The deponent, being duly sworn according to
 law, deposes and says that this statement is made
 on behalf of the taxpayer named, and that the
 facts given below are true and complete:

1. District in which return (if any) was filed
 District of Washington

2. Period (if for income tax, make separate
 form for each taxable year) from....., 19....,
 to....., 19....

3. Character of assessment or tax Estate Tax

4. Amount of assessment, \$21,564,05; dates of
 payment 3/18/38; 11/1/39; 1/9/40

5. Date stamps were purchased from the Government.

6. Amount to be refunded . . \$23,382.78, or such other sum as is legally refundable

7. Amount to be abated (not applicable to income or estate taxes) \$

8. The time within which this claim may be legally filed expires, under Section 810 of the Revenue Act of 1932, on March 18, 1941, Nov. 2, 1942; Jan. 9, 1943

The deponent verily believes that this claim should be allowed for the following reasons:

(See Attached Sheets)

(Attach letter-size sheets if space is not sufficient)

Signed

BAKER-BOYER NATIONAL
BANK of Walla Walla, as executor of estate of Geo. T. Welch, deceased

bt

N. H. DAVIS

as vice-president of Baker-Boyer National Bank

Sworn to and subscribed before me this 29 day of April 1940

C. R. POSTIN

Notary Public

(Signature of officer administering oath) (Title)

[24]

In The Superior Court of the State of Washington
In and for the County of Walla Walla

No. 26994

In the Matter of the Estate

of

GEORGE T. WELCH, deceased, Baker-Boyer Na-
tional Bank, a corporation, as Executor and
Trustee,

Petitioner

vs.

State of Washington, Inheritance tax and Escheat
Division

Respondent

O R D E R

This Matter coming on regularly to be heard before the undersigned and it appearing to the court that a controversy has arisen between the executor and trustee on the one hand and the Supervisor of the Inheritance and Escheat Division on the other hand, and the court having heard the arguments of counsel, and it further appearing to the court that the valuation of the total community estate should be the sum of \$454,988.99 notwithstanding the appraisement of the appraisers on file herein, and that the State of Washington is entitled to the payment of \$3.16, with interest at the rate of eight per cent per annum from the date of the death of decedent until paid; and the court having concluded that the State of Washington is

not entitled to assess inheritance taxes against the estate due to the fact that the charitable trusts created by the will of decedent above named were not limited to use in the State of Washington, and the Court being fully advised in the premises, it is hereby

Ordered, Adjudged and Decreed: that the State of Washington is entitled to receive as additional inheritance tax the sum of \$3.16 with interest thereon from the 15th day of April, 1937, until paid, and the executor and trustee herein having raised the question that he is entitled to instructions from the court directing as to the [25] fund or interest chargeable under the laws of the State of Washington and the terms of said will of the decedent and the decree of distribution heretofore entered herein, the court hereby orders, adjudges and decrees and contrues the said will and decree of distribution:

(1) That under the words, terms and provisions of the said will, admitted to probate herein and made a part hereof by reference the widow of the decedent, Carrie Welch, is entitled to receive from the trustee appointed by said will the net income from the dededent's half of the community property distributed to the trustee by the decree of distribution on file herein; that under the words, terms and provisions of said will, the said widow Carrie Welch received only a life estate with a vested remainder over to the remaindermen therein mentioned, and subject to the trusts therein created.

(2) That under the words, terms and provisions of said will the said widow Carrie Welch has no power to invade the corpus of said estate, but, during her lifetime, is entitled only to the net income above mentioned.

(3) That the remaindermen mentioned in said will inherited vested remainders, subject to the trust therein created.

(4) That the trustee shall not permit the corpus of the said estate to be invaded by the said Carrie Welch, but shall at all times manage and control said property in accordance with the terms of said trust with the powers therein given to it as trustees.

(5) That the trustee herein be and is hereby ordered and directed to pay the inheritance tax provided for out of corpus of the estate.

Done in open Court this 29th day of March, 1940.

TIMOTHY A. PAUL

Judge

Presented by:

BURNS POE & MARVIN EVANS

Attorney for Petitioner

O.K. as to form:

JOHN M. BOYLE, JR.

Attorney for Supervisor

(To Be Attached to the Welch Refund Claim)

The Internal Revenue Agent in Charge, Seattle, Washington, erroneously proposed a deficiency tax of \$21,417.55 to be assessed against the estate of George T. Welch (1) by increasing the value of the gross estate (community one-half) from \$226,303.98 to \$228,244.50 and (2) by disallowing as deductions the charitable and educational bequests taken in the estate return filed by the executor, to-wit:

(a) \$12,500.00 to the Board of Conference Claimant Inc. of the Pacific Northwest Annual Conference of the Methodist Episcopal Church, subject to the life estate of the widow and the grandson of said decedent, and

(b) \$159,035.74 residue subject to life estate to the Baker-Boyer National Bank as trustee for the relief of the aged and poor and for the construction and maintenance of a memorial hospital for them.

The taxpayer did not, and now does not, protest the increase in valuation of the estate placed thereon by the Bureau of Internal Revenue, but does protest the erroneous disallowance of the said deductions, because said deductions are allowable under the provision of section 303 (a) (3), Revenue Act of 1926, as amended, and the amounts thereof were presently ascertainable at time of death.

Under the decedent's will the surviving spouse had the right to expend the income of the estate, but had not the right to sell, alienate, or invade the

corpus. She was given "A life estate."

Besides the proposed \$21,417.55 additional federal tax, the estate of George T. Welch was confronted with the onerous burden of a proposed additional state of Washington inheritance tax in the sum of \$34,854.11, also erroneous, with interest from date of death—fifteen more months than the federal law provided—and then, too, the state interest rate was thirty-three and one-third per cent (33 1/3%) higher than that of the federal government on any additional tax.

Since the proposed assessment of the State Inheritance Tax was the larger assessment of the two, and had the more burdensome interest provision, prudent management of the estate required a prior closing of the State Inheritance Tax; but the state law (Rem. Rev. Stat. 11202-11) would not permit the closing of the State Inheritance Tax matter without an agreement with the Bureau. In order, therefore, to settle the State Inheritance Tax the executor had to sign such an agreement consenting to the assessment of the proposed erroneous tax. The agent's office and collector's office were fully advised, however, that this refund claim would be filed.

In connection with the determination of the State Inheritance Tax, certain rights of the legatees under the will had to be determined. The will had been admitted to probate before the Hon. Timothy Paul, Judge of the Superior Court of the State of Washington in and for the County of Walla Walla, who had conducted all hearings in con-

nection with the same and was familiar with the property rights of the beneficiaries. At a hearing regularly held these questions were presented to him, in connection with the determination of the Inheritance Tax, and he decided: [27]

“That under the words, terms and provisions of said will the said widow, Carrie Welch, has no power to invade the corpus of said estate, but, during her lifetime, is entitled only to the net income above mentioned.”

The Board of Tax Appeals and the Federal Courts are bound by decisions of the State Courts in regard to property rights and the effect of conveyances executed within the state until reversed or overruled, and establishes the law of that jurisdiction and the right of the beneficiaries to that property.

Tyler V. U. S. 281 U. S. 497; 8 A. F. T. R. 10912; Preuler v. Helvering 291 U. S. 35; 13 A. F. T. R. 834; Blair v. Comm. 300 U. S. 5:18 A. F. T. R. 1132

In addition to the foregoing Supreme Court decisions there are numerous district and circuit court decisions to the same effect.

In *Sharpe v. Commissioner*, the Third Circuit Court of Appeals held on Nov. 2, 1939 that:

“That question presented to us has therefore been specifically decided by the Orphans’ Court and that decision unappealed is binding.”

Again the court said:

“The judicial construction of the will by the

State Court determines not only legally but practically the extent and character of the interests taken by the legatees. (*Uterhar v. U. S.* 240 U. S. 598, 603.) This court is bound by the decision of the State Court. (*Preuler v. Helvering* 291 U. S. 5.) *Blair v. Comm.* 300 U. S. 5 We must first therefore discover how the Orphans' Court of Philadelphia County, which had jurisdiction construed Mr. Gilbert's will."

In the *Sharpe* case, we find that the testator, Mr. Gilbert, died on June 28, 1877; his wife on March 23, 1880, and the last child on April 2, 1931. The trust under the will was kept alive, and the construction of the will as to property rights was made fifty-five years after the testator's death. The Bureau maintained before the Board and the Circuit Court that the State Court decision should be followed.

The above cited *Freuler* case involved the construction placed on the will by the State Court after the tax case came before the Board of Tax Appeals. The U. S. Supreme Court sustained the Board's position that the State Court's decision in the construction of the will should be followed.

The bulk of the *Welch* will is devoted to detailed provision for the creation and operation of charities. It was not contemplated by the testator that his widow, *Carrie Welch*, should ever touch the corpus because the trust funds set up for his son and grandson were to be composed of

“Cash, or the equivalent in value thereof in securities found in my estate.”

There was sufficient cash and securities provided by him for those persons. He further provided that if the son and grandson attempted to break the will, [28]

“the cash or the equivalent in value thereof in securities found in my estate.”

set aside for them would go to charity, the interest uppermost in his mind. His widow, who lived frugally, had a \$215,000.00 fortune in her own right with an income therefrom far in excess of her personal needs.

Take the will by its four corners, and it is evident that Mr. Welch intended that charities should receive the bulk of his estate. Therefore, said deductions should now be approved, and the claim for refund allowed.

[Endorsed]: Filed March 29, 1940. [29]

EXHIBIT "C"

Treasury Department
Office of
Commissioner of Internal Revenue

April 17, 1941

MT—ET—2152—Washington
Estate of George T. Welch
Date of death—April 15, 1937
Baker-Boyer National Bank of Walla Walla,
Executor
Baker Building
Walla Walla, Washington

Gentlemen:

Reference is made to the claim filed by the above-named estate of April 30, 1940, for refund of \$23,382.78 Federal estate tax paid under the Revenue Act of 1936.

The claim is based on the contention that the amount of \$171,535.74 shown in the return, Form 706, as a deduction under charitable, public and similar gifts and bequests and which was disallowed by the Bureau, should be allowed. Inasmuch as it cannot be definitely ascertained from the evidence at hand what amount, if any, indefeasibly vested in charity at the date of decedent's death under the provisions of his will, the claim filed by you for refund of \$23,382.78 is rejected in its entirety.

Respectfully,

GUY T. HELVERING

Commissioner

(Signed) By D. S. BLISS

Deputy Commissioner [30]

EXHIBIT "D"

Treasury Department
Washington

March 19, 1941

MT—ET—2152—Washington

Estate of George T. Welch

Date of death—April 15, 1937

Baker-Boyer National Bank of Walla Walla,
Executor
Baker Building
Walla Walla, Washington

Gentlemen:

Reference is made to a deficiency in the amount of \$1,687.24 outstanding against the above-named estate.

The estate has submitted evidence of payment of State estate, inheritance, legacy or succession taxes, in the amount of \$688.67, which is herein allowed.

There remains a deficiency in the amount of \$998.57 which has been assessed in accordance with the Technical Staff settlement of December 28, 1939.

Respectfully,

(Signed) D. S. BLISS

Deputy Commissioner [31]

 EXHIBIT "E"

CLAIM

To Be Filed with the Collector Where Assessment
Was Made or Tax Paid

Collector's Stamp
(Date Received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- Refund of Tax Illegally Collected.
- Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- Abatement of Tax Assessed (not applicable to estate or income taxes).

State of Washington
County of Pierce—ss:

(Type of Print)

Name of taxpayer or purchaser of stamps Baker-Boyer National Bank of Walla Walla as executor of the estate of George T. Welch, dec'd

Business address Baker Bldg. Walla Walla Washington (Street) (City) (State)

Residence Baker Bldg. Walla Walla Washington

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed District of Washington
2. Period (if for income tax, make separate form for each taxable year) from ----, 19--, to ----, 19--
3. Character of assessment or tax Estate tax
4. Amount of assessment, \$24,541.12; dates of payment 3/18/38; 11/1/39; 1/9/40; 4/25/41
5. Date stamps were purchased from the Government -----

6. Amount to be refunded \$24,401.28 plus interest, or such other sum as is legally refundable

7. Amount to be abated (not applicable to income or estate taxes).....

8. The time within which this claim may be legally filed expires, under Section 810 of the Revenue Act of 1932, on 11/1/42; 1/9/43; 4/25/44

The deponent verily believes that this claim should be allowed for the following reasons:

See Attached Sheet

(Attach letter-size sheets if space is not sufficient)

Signed BAKER-BOYER NATIONAL
BANK OF WALLA WALLA,
as executor of estate of Geo. T.
Welch, dec'd

By N. A. DAVIS
as vice-president of Baker-
Boyer National Bank

Sworn to and subscribed before me this 8th day
of May 1941

C. R. FORTLE,
(Signature of officer administering oath)
Notary Public
(Title) [32]

The claim for refund should be allowed for the following reasons:

(a) That the value of the gross estate was erroneously increased from \$226,303.00 to \$228,244.50.

(b) That the will gave the widow a life estate;

That the will was so interpreted by the Superior Court of the State of Washington in and for Walla Walla County, in the regular probate proceedings in the matter of the estate of George T. Welch, to the effect that the widow had only a life estate, and that she could not invade the corpus; therefore, the two bequests mentioned below were fixed and certain.

(c) That the bequest of \$12,500 (paragraph VIII of will) to the Board of Conference Claimants, Inc., of the Pacific Northwest Annual Conference of the Methodist Episcopal Church, subject to life estates of widow and grandson, should have been allowed by the Bureau as a deduction for estate tax purposes; that said amount for said purpose was definite and certain under the will.

(d) That the bequest of residue (paragraph IX of will), being \$159,035.74, subject to life estate, to Baker-Boyer National Bank of Walla Walla, Washington, as trustee for the relief and support of worthy aged and poor and sick and maimed, and, if expedient, for erection of a memorial home for aged, and the establishment of a "revolving fund" for the support and education of worthy boys and girls, should have been allowed as a deduction for estate tax purposes; that said amount for said purpose was definite and certain under the terms of the will.

(e) The taxpayer paid the erroneous tax involved herein merely to expedite a judicial determination—A controversy arose whether the taxpayer owned any additional tax, and guided by the principle that it was cheaper to settle with the govern-

ment than win with costs added, the taxpayer accepted the written offer of the technical staff to settle for \$7,843.29. The settlement was not approved, however, so the taxpayer waived his right to appeal to the Board and consented to an assessment which was paid in full. A claim for refund was then filed, and in a hearing on it another offer of settlement was presented to the taxpayer, a less sum than \$7,843.29. This proved to be unacceptable also and the Bureau afterwards assessed \$998.57 more tax "in accordance with the technical staff settlement of December 28, 1939." No settlement was ever made, so far as *to* taxpayer remembers, to include such a sum as \$998.57 and the assessment of \$998.57 was made in this manner so as to avoid giving the taxpayer a 90-day letter and an opportunity of a hearing before the Board of Tax Appeal. The taxpayer demands that the Commissioner shall give him such a letter.

The taxpayer is still acting as executor. All payments mentioned were made by the executor as such.

EXHIBIT "F"

Treasury Department
Washington

July 7, 1941

Office of

Commissioner of Internal Revenue

Address reply to

Commissioner of Internal Revenue

and refer to

MT—ET—2152—Washington

Estate of George T. Welch

Date of Death—April 15, 1937

Baker-Boyer National Bank

of Walla Walla, Washington, Executor

Baker Building

Walla Walla, Washington

Gentlemen:

Reference is made to the claim on Form 843 filed on May 9, 1941, on behalf of the above-named estate for the refund of Federal estate tax in the amount of "\$24,401.28 plus interest, or such other sum as is legally refundable."

It appears from an examination of the record that the contentions of the taxpayer, subdivisions (a) to (d), inclusive, of the claim, involving the charitable deduction have heretofore had the consideration of the Pacific Division of the Technical Staff, and were the subject of the Bureau letter of April 17, 1941, rejecting the claim filed on behalf of the estate on April 30, 1940, for the refund of \$23,382.78 Federal estate tax paid. Accordingly,

the instant claim is considered in the nature of a request or an application for reconsideration and reopening of the claim rejected on April 17, 1941.

Since it cannot be definitely ascertained from the evidence at hand what amount, if any, indefeasibly vested in charity at the date of the decedent's death under the provisions of his will, the Bureau sees no sound reason for departure from its previous determination.

The amount of \$998.57 referred to in subdivision (e) of the instant claim constitutes a deficiency, as stated in the Bureau letter of May 7, 1941, addressed to your attorney, Burns Poe, due to the disallowance of credit for State inheritance taxes to that extent, but which may be eliminated by timely submission of evidence in support of said additional credit. In other words, there has been filed satisfactory evidence to support credit only in the amount of \$688.67, which is less than 80 per cent of the Federal estate tax computed under the Revenue Act of 1926. If satisfactory evidence to support the balance of the 80 per cent credit is timely filed, claim therefor, if submitted within the time prescribed by the statute, will receive every consideration.

In view of the foregoing, the request in the form of the instant claim for the reopening and recon-

sideration of the rejected claim, is hereby denied and the claim rejected in its entirety.

Respectfully,

GUY T. HELVERING,

Commissioner.

By D. S. BLISS

Deputy Commissioner

[Endorsed]: Filed Aug. 19, 1941. [34]

[Title of District Court and Cause.]

ANSWER

Defendants, by their attorneys, J. Charles Dennis, United States Attorney for the Western District of Washington, and Frank Hale, Assistant United States Attorney for said District, for their answer to plaintiff's complaint herein, admit, allege and deny as follows:

I.

Admit the averments of paragraph I.

II.

Admit the averments of paragraph II.

III.

Admit the averments of paragraph III.

IV.

Allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph IV, except

they admit that on April 15, 1937, the said George T. Welsh died at Walla Walla, Washington, and was survived by his widow, Carrie Welsh, of Walla Walla, Washington, who was born December 4, 1849, and by his son, Fred Welsh and a grandson, George [35] Allen.

V.

Allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph V.

VI.

Admit the averments of paragraph VI.

VII.

Deny each and every averment of paragraph VII.

VIII.

Admit the averments of paragraph VIII.

IX.

Admit the averments of paragraph IX.

X.

Deny the averments of paragraph X, but admit and allege that in the audit of the return filed by the executor of said estate, the United States Commissioner of Internal Revenue tentatively allowed a credit of \$1,687.24 for State inheritance taxes. In a letter of January 11, 1939, in which the credit was tentatively allowed, the executor was advised that before this credit is finally allowed it will be

necessary for the executor to submit a certificate from the Supervisor of Inheritance Taxes of the State of Washington showing payment of said taxes. Under date of March 11, 1941, a report was received from the Internal Revenue Agent in Charge at Seattle, Washington, enclosing a certificate from the Supervisor of Inheritance and Escheat Division of the State of Washington, showing payment of inheritance taxes by this estate in the amount of \$688.67. The agent reported that the sum of \$688.67 represented the total amount of inheritance taxes which has been paid by this estate. Under date of March 19, [36] 1941, a letter was directed to the executor by the said Commissioner, in which the executor was advised that the estate had submitted evidence of payment of said inheritance taxes in the amount of \$688.67, which amount was then allowed.

The executor was also informed in the letter that there remained a deficiency in the amount of \$998.57, which has been assessed in accordance with the Technical Staff settlement of December 28, 1939. This deficiency, plus interest thereon in the sum of \$166.43, or a total of \$1,168, was paid on April 24, 1941, to the Collector of Internal Revenue, Clark Squire.

XI.

Admit the averments of paragraph XI.

XII.

Admit the averments of paragraph XII.

Wherefore, defendants pray that plaintiff have and recover no relief herein and that judgment be

entered in their favor, dismissing plaintiff's complaint with costs.

J. CHARLES DENNIS

United States Attorney.

FRANK HALE

Assistant United States
Attorney.

Received copy of the within Answer this 25 day
of Nov. 1941

BURNS POE

[Endorsed]: Filed Nov. 25, 1941. [37]

[Title of District Court and Cause.]

STIPULATION RE FACTS

It is hereby stipulated by and between the parties hereto by their respective attorneys that the following may be considered as agreed facts and evidence in this case without the necessity of either party introducing proof thereof and that the said facts and evidence may be considered by the Court as binding upon the parties hereto upon the trial of the above entitled cause, subject, however, to objection by either party upon the ground of immateriality.

I.

That the plaintiff is and at all times herein mentioned was a national banking corporation chartered and authorized to engage in business under the laws

of the United States, with its principal place of business at Walla Walla, Washington; and authorized under the laws of the State of Washington to act as executor.

II.

That defendant, Thor W. Henriksen is a resident of the above entitled district and at all times from the 11th day of July, 1936 to and including the 5th day of March, 1941, was acting Collector of Internal Revenue of the United States for [38] the District of Washington; that on the 6th day of March, 1941, the Defendant Clark Squire was appointed Collector of Internal Revenue for said district and at all times since has been and is now such Collector, and that the said Clark Squire at all times since has been and is now a resident of the above entitled District, and maintains an office therein.

III.

That the said George T. Welch, now deceased, did show, and the Plaintiff and its officer have shown true faith and allegiance to the Government of the United States, and that the decedent did not, and the Plaintiff and its officers have not, in any way aided, abetted or given encouragement or comfort to any person or persons or government in rebellion against the Government of the United States, nor did the decedent *or* nor has the Plaintiff or any of its officers aided, abetted or given encouragement or comfort to any sovereign government which is or has been at war with the United States.

IV.

That on April 15, 1937, the said George T. Welch died at Walla Walla, Washington; that he was survived by his widow, Carrie Welch, of Walla Walla, Washington, who was born on December 4, 1849; by his son, Fred Welch, who was born on June 28, 1880, and also by a grandson, George Allen, who was born on August 3, 1909.

V.

That the said George T. Welch and Carrie Welch were married and lived together as husband and wife for more than fifty years and until the day of his death; that all of the personal, real and mixed property, which belonged to him at the time of his death, was community property; that all of said community property belonging to said George T. Welch on April 15, 1937, was located entirely within the State of Washington. [39]

VI.

That when George T. Welch died, he left what is designated under the laws of the State of Washington, a non-intervention Will and Codicil, copies of which are attached to the Complaint and marked Exhibit "A" and which is made a part of this Stipulation by reference as completely as if set forth in full herein; that the said Will and Codicil were admitted to probate by the Superior Court of the State of Washington, in and for Walla Walla County, as the last will and testament of said George T. Welch on the 20th day of April, 1937; that on

said 20th day of April, the said Baker-Boyer National Bank, plaintiff herein was duly appointed executor of said estate and qualified as such and at all times since the said 20th day of April has been and is now the duly qualified and acting executor of said estate; that said court authorized said bank to execute said will and codicil; that a copy of said will and codicil, may be introduced in evidence herein.

VII.

(See Paragraph VIII of Complaint)

That an estate tax return for said estate filed by the said executor with the said acting collector showed a gross valuation of \$226,303.96 and a net valuation of \$7,325.42 for estate tax purposes; that the original estate tax shown on said return and paid by the plaintiff was \$146.50; that the said executor took as deductions in said return all bequests for religious, charitable, scientific and educational purposes, namely to-wit:

(a) a bequest of \$12,500.00 to the Board of Conference Claimant Inc. of the Pacific Annual Conference of the Methodist Episcopal Church, subject to the life estate of the widow and the grandson of said decedent, to be used by said Board for the [40] maintenance and support of retired ministers of said denomination;

(b) a bequest of \$159,035.74 residue, subject, to the life estate of the widow of said decedent, to the Baker-Boyer National Bank as trustee for the relief of aged, indigent and poor, and the maintenance of the sick and maimed and for the construc-

tion and maintenance of a memorial hospital and home for them at Walla Walla, Washington, and for the support and education of worthy boys and girls of Walla Walla County.

VIII.

(See Paragraph IX of the Complaint)

That the office of the Internal Revenue Agent in charge at Seattle, Washington, proposed to raise the gross valuation of the estate to \$228,244.50 and also to increase the net estate to \$180,301.68 by the disallowance of the forementioned bequests thereby increasing the estate tax \$21,417.55 over the \$146.50 already paid: that the additional tax of \$21,417.55 was paid with interest to the said acting collector in this manner to-wit:

Date of Payment	Tax Paid	Interest Paid
Nov. 1, 1939.....	\$ 7,843.29	\$ 609.17
Jan. 9, 1940.....	13,574.26	1,209.56
	<hr/>	<hr/>
Total.....	\$21,417.55	\$ 1,818.73

that the aforesaid additional tax was paid upon the understanding that the payment thereof would not prejudice the right of the plaintiff to file a claim for refund of all payments of estate tax and interest made to the said acting collector; that on the 30th day of April, 1940, the plaintiff filed with the defendant Thor W. Henricksen, as such acting collector, claim for refund of said amounts so paid, a copy of which claim, marked Exhibit "B" is attached to the Complaint and which is made a part of this Stipulation by this reference for all pur-

poses; that a photostatic copy of said claim will be introduced in evidence herein; [41] that on or about the 17th day of April, 1941, plaintiff received notice of rejection of said claim, a copy of which notice marked Exhibit "C", is attached to the Complaint, and by this reference made a part of this Stipulation for all purposes; and that said notice may be introduced in evidence herein.

IX.

(See Paragraph XI of the Complaint)

That on the 9th day of May, 1941, the plaintiff filed with the defendant Clark Squire, as such Collector, a supplemental claim for refund in the amount of \$24,401.25 plus interest, a copy of which claim, marked Exhibit "E", is attached to the Complaint and by this reference made a part of this Stipulation; that a photostatic copy of said claim will be introduced in evidence herein; that on the 11th day of July, 1941, plaintiff received notice of rejection of said claim, dated July 7, 1941 a copy of which notice is attached to the Complaint, marked Exhibit "F" and by this reference is made a part of this Stipulation; and that said notice may be introduced in evidence herein.

X.

(See Paragraph XII of the Complaint)

That all the actions of the defendants were performed by them as officers of the Government of the United States, under rules and instructions of the Commissioner of Internal Revenue; and that all moneys collected by them as aforesaid from the plain-

tiff was paid by them to the Treasury of the United States.

XI.

That parties hereto, by their respective attorneys, reserve the right to introduce any further evidence and testimony that they deem proper; provided, however, that no such evidence and testimony shall be in contradiction of the foregoing stipulated facts. [42]

XII.

That shortly after March 19th, 1941, the plaintiff received a letter from D. S. Bliss, Deputy Commissioner of Internal Revenue, a copy of which is attached to the Complaint and marked Exhibit "D" and by this reference is made a part of this Stipulation; that said letter may be introduced into evidence herein; that on the 25th day of April, 1941, the plaintiff paid the additional assessment to which reference is made in said letter to the defendant, Clark Squire, as Collector of Internal Revenue, together with interest thereon in the amount of \$166.43, making a total payment of \$1165.00.

XIII.

If it becomes material to determine the value of any remainder interest dependent upon the continuation of, or termination of more than one life, the Commissioner shall furnish the applicable factor and such factor shall be accepted as correct in making the computation.

XIV.

That there may be introduced into evidence copies of the following papers filed in the probate proceeding in the estate of George T. Welch, deceased, the papers to be certified by the Clerk of the Superior Court of Walla Walla County:

Order dated March 29, 1940;—Exhibit H.

Final Account and Report;—Exhibit I.

Stipulation for Partition;—Exhibit J.

Decree of Distribution;—Exhibit K.

Petition in Probate dated March 22, 1940;—Exhibit N.

XV.

That the parties accept as correct the sum of \$228,244.50 as the gross valuation of the said estate, which sum represents an increase of \$1,940.54 over the gross estate as shown by the estate tax return filed with the said acting collector by the said executor. [43]

XVI.

That the copy of the Internal Revenue Agent's report sent to the plaintiff under date of January 11, 1939, may be admitted in evidence.

XVII.

That a photostatic copy of the estate tax return of the estate of George T. Welch, is attached hereto as Exhibit G by defendants and put in evidence.

XVIII.

That the total amount of inheritance tax paid to the State of Washington was \$688.67. Exh. N

XIX.

That the alleged deduction of \$159,035.74 claimed on the estate tax return filed by the executor was composed of two items, to-wit: (a) the alleged value of the remainder of the \$30,000.00 bequest made by Paragraph VII of the Will as amended by the Codicil; (b) the alleged value of the remainder interest in the bequest provided for by Paragraph IX of the Will.

Dated this 3rd day of February 1942.

BURNS POE

CAMERON SHERWOOD

Counsel for Plaintiff.

J. CHAS. DENNIS

THOMAS R. WINTER

Counsel for Defendants

[Endorsed]: Filed Feb 3, 1942. [44]

[Title of District Court and Cause.]

MEMORANDUM OPINION

Black, District Judge

September 29, 1942

Mr. Burns Poe

Elizabeth Shackelford

Puget Sound Bank Building

Tacoma, Washington

Mr. Cameron Sherwood

Mr. Marvin Evans

Baker Building

Walla Walla, Washington

For Plaintiff

Mr. J. Charles Dennis

United States Attorney

Mr. Harry Sager

Assistant United States Attorney

Mr. Thomas R. Winter

Special Attorney, Bureau of Internal Revenue,

Seattle, Washington

For Defendants [45]

The plaintiff executors seeks in this action a refund of about \$23,000.00 of estate taxes and interest paid upon the estate of George T. Welch, deceased. The executor contends that the Commissioner of Internal Revenue incorrectly disallowed deductions approximating \$170,000.00 from the return for con-

cedely charitable bequests. The Commissioner's position is that under the will the widow was given power to invade and exhaust the corpus of such charitable bequests and that therefore they were not deductible. The executor takes the position that the will gave the widow no such power at all, and further that the construction of the will by a probate court of the State of Washington of general jurisdiction and also by the widow, which constructions denied her any such right, are conclusive.

George T. Welch, the decedent, a retired farmer of Walla Walla, Washington, died on April 15, 1937 at the age of ninety-five years, leaving surviving him his widow, Carrie Welch, then aged eighty-seven years; his son, Fred B. Welch, and his grandson, George B. Allen. He left an estate of \$226,303.98, this being one-half of the community estate. Under the community property laws of the State of Washington the other one-half belonged to the widow. [46]

Mr. Welch left a will dated in 1930 and a codicil dated in 1931. Under the will, as modified by the codicil, he made two cash bequests of \$500.00 each, and gave, devised and bequeathed to his wife, Carrie Welch, a life estate in all the rest, residue and remainder of his estate. Subject to such life estate of Carrie Welch, he gave his son, Fred B. Welch, a life estate in \$30,000.00 in cash or securities found in his estate, and also subject to the life estate of his wife, gave his undivided one-half interest in certain community real property to his said son "as his absolute estate". Likewise, subject to the

life estate of Carrie Welch, as aforesaid, he gave his grandson, George B. Allen, a life estate of \$12,500.00 in cash or securities as found in his estate. As to such \$12,500.00 the will gave and bequeathed the remainder in trust for charitable use by the Board of Conference Claimants, Inc. of the Pacific Northwest Annual Conference, Methodist Episcopal Church. All the remainder of his estate, subject to the wife's life estate in all of same, as above, and subject to the son's second life estate as to such \$30,000.00 and subject to the son's said absolute estate in said real property, was given, devised and bequeathed to the Baker-Boyer National Bank as Trustee for the concededly charitable purposes of providing education for boys and girls, providing support for the poor, aged and infirm, and erecting a home for the aged as a memorial to the testator and his wife.

The executor insists that the chief and paramount intention of George T. Welch in the making of his will and codicil, as evidenced thereby and as shown by the admitted testimony introduced at the trial, was to provide for the charities which the Commissioner rejected as the basis for deductions from the taxable net estate. The Commissioner [47] concedes that such were and are charities and would be deductible except for what he contends was the authority for the widow under the fifth paragraph of the will to invade the corpus of said charitable bequests.

Paragraph V of the will gave, devised and bequeathed "unto my said wife, Carrie Welch, for and

during her life-time, should she survive me, all the rest, residue and remainder of my estate, both real and personal, including the rents, issues and profits therefrom, and of whatsoever the same may consist and wheresoever situated, with the distinct understanding that no limitation is placed on my said wife in any expenditures which she may make for any purpose, or any accounting be made thereof, with the then remainder over upon her death unto my Trustee, hereinafter named, in trust, nevertheless, for the uses and purposes hereinafter mentioned, to-wit: concededly charitable uses and purposes.

In the succeeding paragraphs of the will the testator a number of times used the words "subject to the life estate hereinbefore given, devised and bequeathed unto my said wife, Carrie Welch, in my estate, should she survive me, as aforesaid". Moreover, in paragraph IX of the will, which specifically sets forth the powers and duties of the charitable trustee, it is stated: "Subject to each and every of the foregoing provisions of this my Last Will and Testament, including the life estate in my said estate hereinbefore given, devised and bequeathed unto my said wife, Carrie Welch, should she survive me, I do hereby give, devise and bequeath all the rest, residue and remainder of my property * * * whether real, personal or mixed, * * * unto my said Trustee, The Baker-Boyer National Bank, of Walla Walla, Washington, to have and to hold the same, together with all the privileges and appurtenances thereunto belonging, and [48] all income and profits arising therefrom, to my said Trustee, perpetually,

in trust” for the charitable purposes specified. Said Paragraph IX specifically gives said charitable Trustee authority over “the identical securities, properties, or investments received by it from my estate, whether it be at my death or at the death of my said wife, Carrie Welch, should she survive me” and specifically authorizes it “To grant, bargain, sell, exchange, convert and lease, * * * and * * * to pledge, assign, partition, subdivide and distribute * * * the income and principal of my said trust estate * * *. To receive and collect all income * * *. * * * to determine what shall constitute principal of the trust estate and what shall constitute gross income therefrom or net income available under the terms of this trust.” The aforesaid use in the will of the term “identical” is extremely significant.

While the will thus so expressly, positively and definitely gives the Trustee power to sell and use the principal and income, or either, of the trust estate, such instrument now here gives the said widow any express authority to sell, convert or dispose of any of the securities or other properties of the estate of any express authority to invade the principal or corpus of the estate in any manner whatsoever.

But the Commissioner contends that the language in said fifth paragraph, to-wit: “with the distinct understanding that no limitation is placed on my said wife in any expenditures which she may make for any purpose, or any accounting be made thereof, with the then remainder over upon her death unto my Trustee,” does by necessary implication give her

such authority to invade the corpus of such charitable bequests to the Trustee, as to make uncertain how much, if any, of [49] such charitable bequests will exist at the time of her death. The Trustee insists that under the authority of *Ithaca Trust Company v. United States*, 279 U. S. 151; *Humes v. United States*, 276 U. S. 487; *Pennsylvania Company for Insurance on Lives, etc. v. Brown*, 70 F. 2d 269; *Ganmons v. Hassett*, 121 F. 2d 229; *Mississippi Valley Trust Company v. Commissioner*, 72 F. 2d, 197; *Burdick v. Commissioner*, 117 F. 2d 972; *United States v. Provident Trust Company*, 291 U. S. 272; *Farrington v. Commissioner*, 30 F. 2d, 915, and similar cases that "the widow, having such a right to use any part of the corpus of the estate, there was no bequest to charity within the meaning of Section 303 (a) (3) of the Revenue Act of 1926 as amended, "26 U. S. C. A. Sec. 812 (d).

Plaintiff, however, contends that the widow had no authority of any kind except the right to the income of the life estate. Plaintiff further insists that even if there was any theoretical implied authority to use some small part of the corpus, which plaintiff in no wise admits, that actually the holdings of *Ithaca Trust Co. v. United States*, *supra*, and *United States v. Provident Trust Company*, *supra*, establish that the charitable bequests are still deductible, and plaintiff, in addition, cites numerous Federal and Supreme Court additional decisions, including particularly *Mead v. Welch*, 95 F. 2d 617 (CCA - 9th); *Commissioner v. Bonfils Trust*, 115 F. 2d 788; *Sanderson, executor, v. Commissioner*, 18

B. T. A. 221; and Boston, etc. Co. and Pfaff, executors, v. Commissioner, 21 B. T. A. 394, to the same effect.

The testator's intent is to be ascertained from the will as a whole and not from any isolated portion or portions. The intention of the testator as gathered from all parts of the will is to be given effect. Any doubtful or ambiguous expression cannot be permitted to defeat the obvious intent [50] of the testatory. 69 C. J. 52, 53, 59, 62, 63; *Cowles v. Matthews*, 197 Wash. 652, at page 654; *Shufeldt v. Shufeldt*, 130 Wash. 253; *Evans v. Ockershausen*, 100 F. 2d 695.

As stated In re Harper's Estate, 168 Wash. 98, at page 106, "In determining the meaning to be given to the words used in a will, extrinsic evidence of the surrounding facts and circumstances may be considered, not for the purpose of proving intention as an independent fact, but as an aid to a right understanding of the language that has been used."

To the same effect are: In re Holmes' Estate (Wisc.) 298 N. W. 638; In re Doepkes' Estates, 182 Wash. 556; *Cotton v. Bank of California*, 145 Wash. 503; *Shufeldt v. Shufeldt*, supra; 69 C. J. p. 63 Sec. 1120.

The purpose of Congress in providing for deductions of charitable bequests was to encourage testators to make the same. A charitable bequests is a favorite of the law and of the courts. The courts are solicitous to give that construction which will sustain rather than defeat a charitable deduction.

During the trial the court reserved ruling upon

defendant's objections as to the admission of certain evidence while allowing the testimony of the witnesses to be heard as offers of proof.

This trial court is of the opinion that it is within its discretion to overrule all of such objections and to admit all of such testimony. However, the objections of defendant will be sustained as to the testimony concerning those certain conversations appearing in the transcript as followed: commencing with the last word in line 3 to line 17, inclusive, page ; commencing with the last word in line 21, page 11, to line 1, page 12, inclusive; lines 8 to [51] 17, inclusive, on page 13; lines 3 to 13; inclusive, page 14; line 3 on page 52 to line 1 on page 53, inclusive.

The objections to all of the balance of the offers of proof are overruled. All of the remainder of the offers of proof is properly admitted in evidence for the purpose of showing the situation of the testator and his wife and the surrounding circumstances at the time of the execution of the will.

Under the uncontradicted testimony admitted in evidence it appears that at the time the will was executed the wife's half interest in the community estate approached a value of a quarter of a million dollars; that when the will was made she was about eighty years of age, an invalid, with a brief life expectancy, and of fixed habits of simple frugality. Certainly the income from her one-half of the community estate plus the income from the life estate in her husband's property provided by his will made

absolutely unnecessary any invasion by her of the corpus of any portion of her husband's estate.

After a careful analysis of the "four corners" of the will and codicil, of the evidence introduced at the trial, together with those matters which were stipulated by the parties, of said Section 303 (a) (3), 26 U. S. C. A. Sec. 812 (d), of the decisions of the Board of Tax Appeals, of the United States Supreme Court and of the Federal Courts, as well as of this state, I am convinced that plaintiff is entitled to prevail.

The widow was given no authority at all by the terms of the will to invade the corpus of such charitable remainders. It seems clear to me that likewise there was no implied authority so to do. The charitable bequests were remainders which vested in the Trustee at the time of the testator's death with merely the enjoyment deferred. There was nothing [52] doubtful as to the identity of the trustee to whom such remainders were given, devised and bequeathed, nor of the certainty of the life estates being terminated.

From a consideration of the will and of the surrounding circumstances or from a consideration of the will alone it is apparent that the primary purposes of the testator was to provide for these charitable bequests. He expressly and clearly gave the Trustee authority over the principal of said bequests. But nowhere did he give the widow any express authority over any principal of his estate. The contrast between the express authority of the Trustee over the principal of the remainder and no

express authority to the wife as to the principal is extremely cogent in establishing that he gave her no such authority by implication.

The situation and circumstances of the husband and wife and of his interest in said charities before the will and codicil were executed, at the time of the execution of same, and after their execution to the time of his death demonstrate that the testatory had no expectation that his wife either needed to or would desire to invade the corpus of the estate at all. The history of events after his death is also very persuasive. For the widow never in the slightest degree invaded or expressed any wish to invade any of the principal or corpus of her husband's estate. In fact, she entered into an agreement recognizing that she had no such authority. See 69 C. J. p. 125, Sec. 1167.

Moreover, the Superior Court of the State of Washington by decree of distribution and by an order holding the values of the bequests not taxable by the state because charitable, decreed that under the terms of the will the widow had no power to invade the corpus. Such decision of the Superior Court was pursuant to the widow's understanding of her [53] rights under the will and while such decision that she had no right to invade the corpus deprived the State of Washington of more than \$30,000.00 inheritance taxes the state did not appeal from such decision.

In *Bayer v. Bayer*, 83 Wash. 430, at p. 435, it is said: "Under the (state) constitution, the superior court is a court of general jurisdiction. It has jur-

isdiction of equity cases, actions at law, and proceedings in probate. * * * The constitution does not make the superior courts probate courts. On the contrary, it makes them courts of general jurisdiction including 'all matters of probate'. As a court of general jurisdiction it has the power to construe wills at the suit of proper parties." Also see *Alaska, etc. Co. v. Noyes*, 64 672 at 676.

It would, therefore, seem that there is much merit in plaintiff's contention that the Commissioner is bound by the decree of distribution by a Washington court of general jurisdiction and its order denying to the State of Washington any inheritance tax on such charitable bequests because under such construction of the terms of the will the widow had no right to invade the corpus. In such connection plaintiff cites: *Uterhart v. U. S.* 240 U. S. 598; *Freuler v. Helvering*, 291 U. S. 35; *Sharpe v. Commissioner*, 107 F. 2d 13; *Hoxie v. Page*, 23 F. Supp. 905.

Regardless of whether such decree of distribution and such order of the Superior Court of Washington are binding and controlling certainly such court's interpretation is most persuasive inasmuch as it clearly is in accord with the intention of the testator.

Even if there was by implication a theoretical right of invasion I am convinced that *United States v. Provident Trust Company*, 291 U. S. 272; *Ithaca Trust Company v. United States*, 279 U. S. 151; and *Mead v. Welch*, 95 F. 2d, 617, are still [54] decisive against the defendant.

The decision of *Mead v. Welch*, *supra*, is particularly in point. Although in that case the widow was given the express authority "to sell, convey, assign, transfer, collect, invest, and reinvest" the corpus it was properly held that in view of all of the provisions of the will and "the further circumstance, disclosed in the record, that Mrs. Mead had a very large estate of her own" that the charitable bequest should have been deducted. In that case the decedent was a resident of California where, as the decision points out, "a life estate with power to sell the property is not, because of such power of sale, enlarged to a fee estate." In this case the decedent was a resident of the State of Washington where likewise, as stated in *re Gochnour's Estate*, 192 Wash. 92 at p. 93, it is held that the power of absolute disposal in the husband by the terms of the will did not prevent the devise and bequest to him constituting a life estate.

This court is not unmindful of the interpretation which defendant places upon the provisions that the widow is not to be limited in her expenditures or required to make an accounting thereof and that the then remainder shall go to the Trustee. But all of said words must be interpreted in the light of the provisions and purposes of the will as a whole and in the light of the practical meaning of such terms.

By common understanding, as well as by definition of lay or legal dictionary, the term "expenditures" generally contemplates paying out. See also *In re*

Homes' Estate, 289 N. W. 638, syllabus (7), also p. 641; *Suppiger v. Enking* (Idaho) 91 P. 2d. 362, syllabus (1).

Under the unquestioned law applicable to life estates the life tenant is entitled to the rents, income and profits. 17 R. C. L. p. 628 Sec. 18. It is evident that the testator wished to free [55] his invalid wife during her short expectancy, in the event she should survive her husband at all, from being under the fear that she would be interfered with as to such expenditures as she might make of the income and from the fear that she would be required to make any accounting of such expenditures of the income. In the closing paragraph of his will the testator used these words: "In order that my said wife, Carrie Welch, may be relieved of the responsibility in the administration upon my estate, and the responsibility incident thereto, I do hereby nominate and appoint my said Trustee * * * the executor of this my Last Will and Testament."

The apparent theory of the defendant seems to be that the lack of such limitation as to expenditures and the lack of the necessity of her to account for her expenditures, while not in themselves giving her lawful authority to invade the corpus, would make it possible for her to wrongfully invade the corpus.

In *Boden v. Johnson*, 47 S. W. 2d. 155 it was held that the mother, entrusted with property, the proceeds of which were to be used to support the minor children, was accountable for failure to use the income for the children's benefit although the contract stipulated that she should not be required

to account for "expenditures", for the reason that while not required to account for the expenditures that she was required to use the income for the children's benefit. Similarly in this case the widow, while not required to account for her expenditures of the income of the life estate, would not be permitted to wrongfully invade the corpus.

"Words omitted from a will may be supplied by the court whenever necessary to effectuate the testator's intention as [56] expressed in the will;" 69 C. J. 82 (Sec. 1140); *In re Peters' Estate*, 101 Wash. 572. The words "of income" it would seem might very properly be supplied immediately following the term "expenditures" in said paragraph V.

Actually it is more reasonable that the testator used the words "the then remainder" with the idea that the then remainder would represent the corpus plus a portion of the unexpended income rather than represent merely the substantially diminished corpus.

Corroborating such very reasonable assumption is the language employed by him in paragraph VII of the will and in the codicil with reference to the \$30,000.00 bequest, which was first subject to the wife's life estate and then to the son's life estate with the remainder to the trustee for a specified charity. In each instance he mentioned "unused net income" as a possible addition to the principal. Paragraph VII of the will directed that the net income as to the \$30,000.00 during the life estate of the son should be paid to him, and directs that all

such net income after the wife's and son's death should be paid to the specified charity. How can we say that the testator did not assume that the period when the net income might not all be used would be during his wife's life estate? In the codicil, for example, the testator, after reciting the right in his wife in connection therewith, employs these words: "I do hereby give and bequeath the principal of said trust fund, with any remaining unused net income therefrom, if any there be, conditioned as above, unto my said 'Trustee'". Therefore "the then remainder" can be considered as the corpus plus "any remaining unused net income therefrom".

If the defendant is correct in his interpretation of the lack of limitation on expenditures, the lack of requirement [57] for accounting, and the use of the term "then remainder" with reference to the wife's life estate, giving her the right to invade and during her life completely exhaust the remainders, then the wife likewise by reason thereof had the right to invade and dispose of the testator's undivided one-half interest in certain realty by Paragraph VI of the will given, devised and bequeathed to the son, subject to the wife's prior life estate. Defendant's brief asserts that Carrie Welch by reason of such language in Paragraph V not only had the right to invade, sell and dispose of the entire corpus but also even to give away so much thereof as she might wish. If such contention is sound then she could during the existence of her life estate by quit claim deed give away the son's vested remain-

der in said real estate. It does not appear to me that anyone would seriously contend that the grantee of any deed from Carrie Welch, whether of gift or sale, could hold title to such real property against the son.

Unquestionably, the father never intended that the widow, by virtue of her life estate in said half interest in such real property, could deprive the son of his invested remainder therein. And if she could not invade the corpus of said real property it necessarily follows that she could not invade the corpus of the charitable bequests. The son's remainder in said real property was subject to the same life estate and subject to the same provisions of no limitation on expenditures, no accounting, and the "then remainder" as were the charitable bequests.

In the same paragraph V upon which defendant relies, we find this language: "but should I survive my said wife, Carrie Welch, then upon my death I do hereby give, devise and bequeath all the "then rest, residue and remainder of my estate * * * unto my said Trustee". Obviously, the "then re- [58] mainder" a few lines before in the same paragraph V with reference to the wife refer to the same type of a "then rest, residue and remainder" as the testator would leave if she predeceased him. Then "then" in Paragraph V used in connection with the wife is no different in type, degree, meaning or implication than the similar "then" a few lines later in the same paragraph used in connection with the testator himself in the event she pre-

deceased him. Since the "then" in Paragraph V with reference to the "rest, residue and remainder" at the death of the testator of necessity refers to the state after the previously mentioned bequests have been carved therefrom, it follows that said "then" used in connection with the widow similarly refers to the same testator's estate after the same bequests have been carved from such estate. *Welch v. Mead, supra.*

The defendant further urges that the spendthrift restrictions on alienations of the income of their life estates by the son and grandson and lack of any such restriction upon the wife is further proof of her implied power to invade the corpus. The contrary appears. There was no provision restricting either the son or grandson from invading the corpus. There was no necessity as they had no such authority.

Likewise, there was no provision to restrict the wife from invading the corpus of the life estate. There was no need because she likewise had no authority nor any such inclination. Of course, there was no restriction upon her alienation of her right to income from her life estate as there was no reason at all for any spendthrift precaution as to her.

That portion of section 81.46 of Regulations 105, issued in 1942 by the United States Treasury Department, Bureau of Internal Revenue, cited by plaintiff, is not, of course, [59] applicable to this cause, the decedent having died in 1937. Section 81.1 thereof specifies that such Regulations 105

“apply only to estate taxes imposed by chapter 3 of the Internal Revenue Code (53 Stat., Part 1) on the estates of decedents dying after February 10, 1939”.

For the reasons stated in this opinion and in view of the testator’s intent as disclosed by the will and the evidence admitted in this cause and by virtue of the court decisions herein cited plaintiff is entitled to a refund of the taxes and interest paid upon the worth at time of testator’s death of said charitable bequests, which bequests as in *Mead v. Welch*, *supra*, were “ascertainable on an actuarial basis and should have been deducted in determining the estate tax.”

Dated September 29th, 1942.

LLOYD L. BLACK

United States District Judge

[Endorsed]: Filed Sept. 29, 1942. [60]

[Title of District Court and Cause.]

NOTICE TO J. CHARLES DENNIS, U. S. ATTORNEY, AND THOMAS R. WINTER, SPECIAL ATTORNEY, BUREAU OF INTERNAL REVENUE, ATTORNEYS FOR DEFENDANTS

You and Each of You will please take Notice that within ten days after the Commissioner of Internal Revenue furnished the applicable factors as required by Paragraph XIII of the Stipulation of

the parties herein, the undersigned Attorneys for the Plaintiff have filed with the Clerk of the above entitled Court and herewith serve upon you, as Attorneys for the Defendants, Findings of Fact and Judgment proposed by the Plaintiff and will request the above entitled Court to sign the same at the expiration of fifteen days from the date hereof.

Dated this 21st day of January, 1943.

BURNS POE

Attorney for Plaintiff.

Receipt is hereby acknowledged this 21st day of January, 1943, by the undersigned Attorney for the defendants of copy of foregoing Notice.

J. CHARLES DENNIS

United States District Attorney,
Attorney for Defendants.

[Endorsed]: Filed Jan. 23, 1943. [61]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This matter, having come on regularly for trial on the third day of February, 1942, before the undersigned Judge of the above entitled Court, sitting without a jury, trial by jury having been waived, the plaintiff appearing by Burns Poe, Cameron Sherwood and Marvin Evans, and Eliza-

both Shackleford, its Attorneys, and the defendants Thor W. Henrickson, formerly Acting Collector of Internal Revenue for the District of Washington; and Clark Squire, Collector of Internal Revenue for the District of Washington, appearing by J. Charles Dennis, United States Attorney, Oliver Malm, Assistant United States Attorney, and Thomas R. Winter, Special Attorney, Bureau of Internal Revenue, as their Attorneys, and the evidence on behalf of both parties having been submitted, and the Court having considered argument of counsel for the respective parties and having heretofore entered his opinion in writing based upon all of the evidence, the stipulation of the parties and said argument, which opinion and stipulation are hereby incorporated in these Findings by this reference as fully as if set forth herein verbatim, and the Commissioner of Internal Revenue having on the 20th day of January, 1943, furnished the applicable factors as provided by paragraph XIII of the stipulation of the parties, the Court does hereby make the following: [62]

FINDINGS OF FACT

I.

That the plaintiff is and at all times herein mentioned was a national banking corporation chartered and authorized to engage in business under the laws of the United States, with its principal place of business at Walla Walla, Washington; and authorized under the laws of the State of Washington to act as executor.

II.

That defendant, Thor W. Henriksen is a resident of the above entitled district and at all times from the 11th day of July, 1936 to and including the 5th day of March, 1941, was acting collector of Internal Revenue of the United States for the District of Washington; that on the 6th day of March, 1941, the Defendant Clark Squire was appointed Collector of Internal Revenue for said district and at all times since has been and is now such Collector, and that the said Clark Squire at all times since has been and is now a resident of the above entitled District, and maintains an office therein.

III.

That the said George T. Welch, now deceased, did show, and the Plaintiff and its officer have shown true faith and allegiance to the Government of the United States, and that the decedent did not, and the Plaintiff and its officers have not, in any way aided, abetted or given encouragement or comfort to any person or persons or government in rebellion against the Government of the United States, nor did the decedent or nor has the Plaintiff or any of its officers aided, abetted or given encouragement or comfort to any sovereign government which is or has been at war with the United States. [63]

IV.

That on April 15, 1937, the said George T. Welch died at Walla Walla, Washington; that he was survived by his widow, Carrie Welch, of Walla Walla,

Washington, who was born on December 4, 1849; by his son, Fred Welch, who was born on June 28, 1880, and also by a grandson, George Allen, who was born on August 3, 1909.

V.

That the said George T. Welch and Carrie Welch were married and lived together as husband and wife for more than fifty years and until the day of his death; that all of the personal, real and mixed property, which belonged to him at the time of his death, was community property; that all of said community property belonging to said George T. Welch on April 15, 1937, was located entirely within the State of Washington.

VI.

That when George T. Welch died, he left what is designated under the laws of the State of Washington, a non-intervention will and codicil, copies of which have been admitted in evidence herein pursuant to the stipulation of the parties; that the said Will and Codicil were admitted to probate by the Superior Court of the State of Washington, in and for Walla Walla County, as the Last Will and Testament of said George T. Welch on the 20th day of April, 1937; that on said 20th day of April, 1937, the said Baker-Boyer National Bank, plaintiff herein, was duly appointed executor of said estate and qualified as such and at all times since the said 20th day of April, 1937, has been and is now the duly qualified and acting executor of said

estate; that said Court authorized said bank to execute said Will and Codicil. [64]

VII.

That an estate tax return for said estate filed by the said executor with the said acting Collector showed a gross valuation of \$226,303.96 and a net valuation of \$7,325.42 for estate tax purposes; that the original estate tax shown on said return and paid by the plaintiff was \$146.50; that the said executor took as deductions in said return all bequests for religious, charitable, scientific and educational purposes, namely, to-wit:

(a) A bequest of \$12,500.00 to the Board of Conference Claimant Inc. of the Pacific Annual Conference of the Methodist Episcopal Church, subject to the life estate of the widow and the grandson of said decedent, to be used by said Board for the maintenance and support of retired ministers of said denomination;

(b) A bequest of \$159,035.74 residue, subject to the life estate of the widow of said decedent, to the Baker-Boyer National Bank as trustee for the relief of aged, indigent and poor, and the maintenance of the sick and maimed and for the construction and maintenance of a memorial hospital and home for them at Walla Walla, Washington, and for the support and education of worthy boys and girls of Walla Walla County, Washington.

VIII.

That the office of the Internal Revenue Agent in charge at Seattle, Washington, raised the gross

valuation of the estate to \$228,244.50 and also increased the net estate to \$180,301.68 by the disallowance of the forementioned bequests thereby increasing the estate tax \$21,417.55 over the \$146.50 already paid; that the additional tax of \$21,417.55 was paid with interest to the said acting Collector in this [65] manner, to wit:

Date of Payment	Tax Paid	Interest Paid
Nov. 1, 1939.....	\$ 7,843.29	\$ 609.17
Jan. 9, 1940.....	13,574.26	1,209.56
Total.....	<u>\$21,417.55</u>	<u>\$ 1,818.73</u>

that the aforesaid additional tax was paid upon the understanding that the payment thereof would not prejudice the right of the plaintiff to file a claim for refund of all payment of estate tax and interest made to the said acting collector; that on the 30th day of April, 1940, the plaintiff filed with the defendant Thor W. Henricksen, as such acting collector, claim for refund of said amounts so paid, a copy of which claim has been admitted in evidence herein pursuant to the stipulation of the parties; that on or about the 17th day of April, 1941, plaintiff received notice of rejection of said claim, a copy of which notice has been admitted in evidence herein pursuant to the stipulation of the parties.

IX.

That on the 9th day of May, 1941, the plaintiff filed with the defendant Clark Squire, as such Collector, a supplemental claim for refund in the amount of \$24,401.25 plus interest, a copy of which

claim has been admitted in evidence herein pursuant to the stipulation of the parties; that on the 11th day of July, 1941, plaintiff received notice of rejection of said claim, a copy of which notice has been admitted in evidence herein pursuant to the stipulation of the parties.

X.

That all the actions* of the defendants were performed by them as officers of the Government of the United States, under rules and instructions of the Commissioner of Internal [66] Revenue; and that all moneys collected by them as aforesaid from the plaintiff was paid by them to the Treasury of the United States.

XI.

That shortly after March 19th, 1941, the plaintiff received a letter from D. S. Bliss, Deputy Commissioner of Internal Revenue, a copy of which has been admitted in evidence herein by stipulation of the parties; that on the 24th day of March, 1941, the plaintiff paid the additional assessment to which reference is made in said letter to the defendant, Clark Squire, as Collector of Internal Revenue, together with interest thereon in the amount of \$166.43, making a total payment of \$1165.00.

XII.

That the total amount of inheritance tax paid to the State of Washington was \$688.67.

XIII.

That the deduction of \$159,035.74 claimed on the estate tax return filed by the executor was composed of two items, to-wit:

(a) the value of the remainder of the \$30,000.00 bequest made by Paragraph VII of the Will as amended by the Codicil;

(b) the value of the remainder interest in the bequest provided for by Paragraph IX of the Will.

XIV.

That it is material to determine the value of the following remainder interests dependent upon the continuation of or termination of more than one life, to-wit:

The remainder interest of the Board of Conference Claimants, Inc. of the Pacific Annual Conference of the Methodist Episcopal Church in the bequest of \$12,500 dependent upon the termination of the lives of the widow and grandson of the deceased; [67]

The remainder interest of the Baker-Boyer National Bank as trustee for certain charitable purposes in the bequest of \$30,000 dependent upon the termination of the lives of the widow and son of the deceased;

That the applicable factor for determining each of such remainder interests is respectively 0.29815 and 0.55761;

That it is material to determine the value of the remainder interest in the residue of the estate upon the termination of the life of Carrie Welch, and that the applicable factor is 0.88024.

XV.

That the Board of Conference Claimants, Inc., of the Pacific Annual Conference of the Methodist Episcopal Church is a corporation organized for religious and charitable purposes in the sense that the words "religious" and charitable" are used in Section 812 (d) of the Internal Revenue Code, and that no part of the net earnings of said corporation inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; that the bequests to the Baker-Boyer National Bank as trustee are to be used by such trustee exclusively for charitable and educational purposes in the sense that the words "charitable" and "educational" are used in Section 812 (d) of the Internal Revenue Code.

XVI.

At the time the will was executed the wife's half interest in the community estate approached a value of a quarter of a million dollars; that when the will was made she was about eighty years of age, an invalid, with a brief life expectancy and of fixed habits of simple frugality; that the income from her one-half of the community estate plus the income from the life [68] estate in her husband's property amply provided for her and made unnecessary any invasion by her of the corpus of any portion of her husband's estate. The widow was given no authority at all by the terms of the will to invade the corpus of the charitable remainders, and there was no im-

plied authority so to do. The charitable bequests were remainders which vested in the trustee at the time of the testator's death with merely the enjoyment deferred. From a consideration of the will and of the surrounding circumstances or from a consideration of the will alone it is apparent that the primary purposes of the testator was to provide for these charitable bequests. The situation and circumstances of the husband and wife and of his interest in said charities before the will and codicil were executed, at the time of the execution of same and after their execution to the time of his death demonstrate that the testator had no expectation that his wife either needed to or would desire to invade the corpus of the estate at all; and after his death the widow never in the slightest degree invaded or expressed any wish to invade any of the principal or corpus of her husband's estate. In fact, she entered into an agreement recognizing that she had no authority. Moreover, the Superior Court of the State of Washington by decree of distribution and by an order holding the values of the bequests not taxable by the state because charitable, decreed that under the terms of the will she had no power to invade the corpus. Such decision of the Superior Court was pursuant to the widow's understanding of her rights under the will and while such decision that she had no right to invade the corpus deprived the State of Washington of more than \$30,000 inheritance taxes, the state did not appeal from such decision. [69]

In providing that the widow is not to be limited

in her expenditures or required to make an accounting thereof, the testator impliedly expressed full confidence in her integrity, and his wife's ability and bestowed upon her the same independence and freedom from others that they had both enjoyed during his lifetime and wished to free his invalid wife during her short expectancy in the event she should survive her husband at all, from being under the fear that she would be interfered with as to such expenditures as she might make of income and from the fear that she would be required to make an accounting. The estate of the widow is a life estate, and the widow, while not required to account for her expenditures of the income of the life estate, would not be permitted to wrongfully invade the corpus. The testator used the words "then remainder" with the idea that the then remainder would represent the corpus plus a portion of the unexpended income, rather than represent merely the substantially diminished corpus. There was no reason for any spendthrift precaution as to the widow.

Done in open Court this 15th day of February, 1943.

LLOYD L. BLACK

Judge.

[69a]

And from the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. That the Court has jurisdiction of the subject matter of this action and of the parties thereto.

2. That the value of the bequests for charitable purposes were capable of definite ascertainment at the time of the death of the decedent.

3. That the plaintiff was entitled to deduct upon the estate tax return of decedent the following, as charitable bequests:

a. The value of the remainder interest of the Board of Conference Claimants, Inc. of the Pacific Annual Conference of the Methodist Episcopal Church in a bequest of \$12,500, such value amounting to \$3726.88.

b. The value of the remainder interest of the Baker-Boyer National Bank, as trustee for charitable purposes declared in the will of decedent, in the bequest of \$30,000, such value amounting to \$16,728.30.

c. The value of the remainder interest of the Baker-Boyer National Bank, as trustee for charitable purposes declared in the will of decedent, in the residue of the estate, such value amounting to \$150,455.18.

3. That the plaintiff is entitled to judgment as follows:

(a) Against defendant, Thor W. Henricksen, in the sum of \$8407.92, with interest thereon as provided by law from the 1st day of November, 1939; and in the further sum of \$14,783.82 with interest thereon as provided by law from the 9th day of January, 1940:

(b) Against defendant, Clark Squire, in the sum of \$1165.00 with interest thereon as provided by law from the 24th day of March, 1941;

4. That said judgment should contain a certificate of probable cause. [70]

5. That plaintiff should recover its costs herein.

Done in Open Court this 15th day of February, 1943.

LLOYD L. BLACK

Judge

Presented by:

BURNS POE

CAMERON SHERWOOD

MARVIN EVANS

ELIZABETH SHACKLEFORD

Attorneys for Plaintiff.

Receipt is hereby acknowledged this 21st day of January, 1943, of copy of the foregoing Findings of Fact and Conclusions of Law, proposed by plaintiff.

J. CHARLES DENNIS

United States District Attorney,
Attorney for Defendants.

To all of which findings and conclusions defendants except and said exception is hereby allowed.

2/15/43.

LLOYD L. BLACK

Judge

[Endorsed]: Filed Feb. 15, 1943. [71]

United States District Court, Western District of
Washington, Southern Division

BAKER-BOYER NATIONAL BANK, a corpora-
tion, executor of the Estate of GEORGE T.
WELCH, deceased,

Plaintiff,

vs.

THOR W. HENRICKSON, formerly Acting Col-
lector of Internal Revenue for the District of
Washington; and CLARK SQUIRE, Collector
of Internal Revenue for the District of Wash-
ington,

Defendants.

JUDGMENT

This matter coming on regularly to be heard on the third day of February, 1942, before the undersigned, sitting without a jury, pursuant to stipulation of the parties herein, waiving trial by jury, and the plaintiff and defendants having offered their evidence and having rested, and the Court having heard the arguments of counsel, and having made and filed herein Findings of Fact and Conclusions of Law in favor of the plaintiff and against defendants, and being fully advised in the premises, now, on motion of the plaintiff, it is hereby,

Ordered, Adjudged and Decreed, That plaintiff do have and recover of and from the defendant, Thor W. Henriksen, the sum of \$8407.92 with interest thereon as provided by law from the first

day of November, 1939; and in the further sum of \$14,783.82 with interest thereon as provided by law from the 9th day of January, 1940; and that the plaintiff do have and recover of and from the defendant, Clark Squire, the sum of \$1165.00 with interest thereon as provided by law from the 24th day of March, 1941.

It Is Further Ordered, That plaintiff do have and recover [72] of and from the defendants its taxable costs and disbursements, to be taxed by the Clerk of this Court.

It Is Further Ordered, That no execution issue hereon.

And the Court does further determine and certify that the defendants as Collectors of Internal Revenue had probable cause for their actions in collecting from the Plaintiff the amounts for which the foregoing Judgment is rendered.

Done in open Court this 15th day of February, 1943.

LLOYD L. BLACK

Judge.

Presented by:

BURNS POE

MARVIN EVANS

CAMERON SHERWOOD

ELIZABETH SHACKLEFORD

Attorneys for Plaintiff.

Receipt is hereby acknowledged this 21st day of January, 1943, by the undersigned Attorney for defendants of a copy of the foregoing Judgment proposed by the Plaintiff.

J. CHARLES DENNIS
United States District
Attorney
Attorney for Defendants.

[Endorsed]: Filed February, 15, 1943. [73]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Thor W. Henricksen, formerly Acting Collector of Internal Revenue for the District of Washington, and Clark Squire, Collector of Internal Revenue for the District of Washington, defendants above-named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on February 15, 1943.

J. CHAS DENNIS
United States Attorney.

HARRY SAGER
Assistant United States
Attorney.

THOMAS R. WINTER
Special Assistant to the Chief
Counsel, Bureau of Internal
Revenue.

Copy of Notice of Appeal mailed to Burns Poe,
attorney for Plaintiff this 16th day of March, 1943.

E. REDMAYNE,
Dep. Clerk

[Endorsed]: Filed Mar. 16, 1943. [74]

[Title of District Court and Cause.]

ORDER RE EXHIBITS

Upon application of one of the attorneys for de-
fendants and appellants herein and good cause ap-
pearing therefor, it is hereby

Ordered that all original exhibits in this cause
be transmitted to the United States Circuit Court
of Appeals, Ninth Circuit, in connection with the
appeal of this case.

Dated this 29th day of March, 1943.

JOHN C. BOWEN

United States District Judge

Presented by

Harry Sager

Assistant United States Attorney.

[Endorsed]: Filed Mar 29, 1943. [75]

[Title of District Court and Cause.]

STIPULATION FOR RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

It is hereby stipulated by and between the defendants and the plaintiff, through their respective attorneys, that the record in this case to be contained in the record on appeal shall consist of the following:

1. Complaint and exhibits attached thereto, filed August 19, 1941.
2. Answer, filed November 25, 1941.
3. Stipulation, dated and filed February 3, 1942.
4. Court's Memorandum Opinion, dated and filed September 29, 1942.
5. Findings of Fact and Conclusions of Law, dated and filed February 15, 1943.
6. Judgment, dated and filed February 15, 1943.
7. Notice of Appeal, filed March 16, 1943.
8. Transcript of Proceedings as prepared by Mary White Bible, Court Reporter.
9. All original exhibits to be transmitted to the Circuit Court to be available to the Court for [76] inspection without printing, for the reason that some of these exhibits are duplicates of the copies attached to the complaint while others are photographs, photostat copies of records not of a printable character, are voluminous and contain many provisions not material.

10. Order re exhibits.

11. This Stipulation.

J. CHAS. DENNIS

United States Attorney.

HARRY SAGER

Assistant United States
Attorney.

THOMAS R. WINTER

Special Assistant to the Chief
Counsel, Bureau of Internal
Revenue.

Attorneys for Defendants.

BURNS POE

MARVIN EVANS

Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 29, 1943. [77]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Judson W. Shorett, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify and return that the foregoing Transcript of the Record on Appeal, consisting of pages numbered 1 to 77, inclusive, is a full, true and correct copy of so much of the record, papers and proceedings in Cause 267, Baker-Boyer National Bank, a corporation, Executor of the Estate of George T. Welch, deceased, Plaintiff and Appellee, vs. Thor W. Henriksen, formerly acting Collector

of Internal Revenue for the District of Washington, and Clark Squire, Collector of Internal Revenue for the District of Washington, Defendants and Appellants, as required by the Stipulation for Designation of Record on Appeal, (except Item 8 of said Stipulation, namely, Transcript of Proceedings, the original of which is transmitted herewith), on file and of record in my office at Tacoma, Washington, the same constituting the Transcript of the Record on Appeal from the Judgment of the District Court of the United States for the Western District of Washington, Southern Division, to the United States Circuit Court of Appeals for the Ninth Circuit. [78]

I do further certify that the original exhibits, numbered as follows: Plaintiff's Exhibits Nos. 1 to 10, inclusive, and also Plaintiff's Exhibits "A" to "M", inclusive, being a part of the Stipulation filed under date of February 3, 1942 (See page 4 of the original Transcript of Proceedings), and Defendants' Exhibits "A" and "B", are transmitted herewith pursuant to order of the District Court herein.

Original Stipulation for Designation of the Record for Printing in the Circuit Court is also transmitted herewith.

I do further certify that the following is a full, true and correct statement of all expenses, fees and charges incurred on behalf of the Defendants-Appellants herein in the preparation and certification of this Transcript of the Record on Appeal to the United States Circuit Court of Appeals for Ninth Circuit, to-wit:

Appeal fee	\$ 5.00
Clerk's fees for comparing and pre- paring aforesaid record	10.80
Clerk's certificate	.50
	<hr/>
	\$16.30

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court, in the City of Tacoma, State of Washington, this 20th day of April, 1943.

[Seal]

JUDSON W. SHORETT,

Clerk

By E. REDMAYNE

Deputy [79]

[Title of District Court and Cause.]

TESTIMONY

Be It Remembered, the above-entitled action came on regularly for trial, on this the 3d day of February, 1942, before the Honorable Lloyd L. Black, sitting in the above-entitled Court, in Tacoma, Washington;

The plaintiff was represented by its Counsel Burns Poe, Esq., Attorney-at-Law, of Tacoma, Washington; and Cameron Sherwood and Marvin Evans, Esqs., of Walla Walla, Washington; and

The defendants were represented by their Counsel, Thomas R. Winter, Esq., Special Assistant to the Chief Counsel, Bureau of Internal Revenue, of

Seattle, Washington; Whereupon, the following proceedings were had:—[2*]

The Court: In the matter of Baker-Boyer National Bank versus Thor W. Henricksen and Clark Squire, in their official capacities, and as more specifically set forth in the title of the Cause, are the parties ready?

Mr. Poe: Your Honor, I would like to move at this time that Mr. Cameron Sherwood, of Walla Walla, be associated with me.

The Court: He will be associated with you and the record may so show.

Mr. Poe: At this time, we would like to offer the stipulation entered into between Counsel for the Government and the Attorneys for the plaintiff and herewith are the exhibits attached to the stipulation, in which most all of the facts, except Paragraph VII, which involves the interpretation of the will, are stipulated.

Mr. Winter: We haven't attached the exhibits to the written stipulation, itself, because they are not quite susceptible to attachment.

The Court: They are referred to?

Mr. Winter: Yes and we will leave them in the one folder, if that will be satisfactory?

The Court: What is the date of the stipulation?

Mr. Winter: It is dated today—if we dated it. Each and every one of the exhibits are referred to in the stipulation.

* Page numbering appearing at foot of page of original Reporter's Transcript.

The Court: What is the date of the stipulation?

Mr. Poe: We will date it today.

Mr. Winter: February 3d, 1942. [3]

The Court: Do I understand this stipulation is offered in evidence?

Mr. Poe: It is.

The Court: The stipulation, with the exhibits referred to and identified by the stipulation, is admitted in evidence.

The stipulation and exhibits last above referred to, admitted in evidence and made a part of the record herein.

[Printer's Note: The Stipulation of Facts referred to is set out at page 52 of this printed record. Exhibits A, B, C, D, E, F, are set out in full in the complaint, at pages 9 to 49 of this printed record. Exhibits H, I, J, K, L, N, are reproduced below in full.]

EXHIBIT "H"

In the Superior Court of the State of Washington
In and for the County of Walla Walla

No. 26994

In the Matter of the Estate

of

GEORGE T. WELCH, Deceased Baker-Boyer
National Bank, a corporation, as Executor and
Trustee,

Petitioner

vs.

STATE OF WASHINGTON, Inheritance Tax and
Escheat Division

Respondent

ORDER

This Matter coming on regularly to be heard before the undersigned and it appearing to the court that a controversy has arisen between the executor and trustee on the one hand and the Supervisor of the Inheritance and Escheat Division on the other hand, and the court having heard the arguments of counsel, and it further appearing to the court that the valuation of the total community estate should be the sum of \$454,988.99 notwithstanding the appraisement of the appraisers on file herein, and that the State of Washington is entitled to the payment of \$3.16, with interest at the rate of eight percent per annum from the date of the

death of decedent until paid; and the court having concluded that the State of Washington is not entitled to assess inheritance taxes against the estate due to the fact that the charitable trusts created by the will of decedent above named were not limited to use in the State of Washington, and the court being fully advised in the premises, it is hereby

Ordered, Adjudged and Decreed: that the State of Washington is entitled to receive as additional inheritance tax the sum of \$3.16 with interest thereon from the 15th day of April, 1937 until paid, and the executor and trustee herein having raised the question that he is entitled to instructions from the court directing as to the fund or interest chargeable under the laws of the State of Washington and the terms of said will of the decedent and the decree of distribution heretofore entered herein, the court hereby orders, adjudges and decrees and construes the said will and decree of distribution:

(1) That under the words, terms and provisions of the said will, admitted to probate herein and made a part hereof by reference, the widow of the decedent, Carrie Welch, is entitled to receive from the decedent's half of the community property distributed to the trustee by the decree of distribution on file herein; that under the words, terms and provisions of said will, the said widow Carrie Welch, received only a life estate with a vested remainder over to the remaindermen therein mentioned, and subject to the trusts therein created.

(2) That under the words, terms and provisions

of said will the said widow Carrie Welch has no power to invade the corpus of said estate, but, during her lifetime, is entitled only to the net income above mentioned.

(3) That the remaindermen mentioned in said will inherited vested remainders, subject to the trust therein created.

(4) That the trustee shall not permit the corpus of the said estate to be invaded by the said Carrie Welch, but shall at all times manage and control said property in accordance with the terms of said trust with the powers therein given to it as trustees.

(5) That the trustee herein be and is hereby ordered and directed to pay the inheritance tax provided for out of corpus of the estate.

Done in open court this 29th day of March, 1940.

TIMOTHY A. PAUL,
Judge.

Presented by:

BURNS POE & MARVIN EVANS
Attorney for Petitioner

O.K. as to Form:

JOHN M. BOYLE, Jr.
Attorney for Supervisor

[Endorsed]: Filed March 29, 1940.

EXHIBIT "I"

In the Superior Court of the State of Washington,
In and for Walla Walla County.

No. 26994

In the Matter of the Estate

of

GEORGE T. WELCH, Deceased

FINAL ACCOUNT AND REPORT AND
PETITION FOR DISTRIBUTION

Comes now the Baker-Boyer National Bank, of Walla Walla, Washington, as Executor of the estate of the above named George T. Welch, deceased, and presents and files herewith this its Final Account and Report and Petition for Distribution in manner following:

I.

That prior hereto and on the 20th day of April, 1937, it was by an Order of this Court duly appointed Executor of the Last Will and Testament of decedent, whereupon it duly qualified as such Executor and on said date Letters Testamentary were duly issued to it, and from thencehitherto it has continued to administer upon decedent's estate and is now the duly appointed, qualified and acting Executor thereof.

II.

That Notice to Creditors in the matter of said estate was duly published on the 21st day of April, 1937; that said Notice to Creditors was duly pub-

Exhibit "I"—(Continued)

lished for the time and in the manner required by law as is evidenced by the proof of publication thereof now on file with the Clerk of this Court, reference thereto being hereto made, as much so as if set forth herein verbatim.

III.

That the time for serving and filing of claims against said estate expired on the 21st day of October, 1937, and that within the time so limited for serving and filing of claims against the estate of decedent the following claims were duly served and filed with the Clerk of Court and thereafter presented to said Executor and allowed by it and likewise allowed and approved by the Court, to-wit:

Mrs. Bessie Tweedy for professional services as nurse	\$ 18.00
Agnes Newhouse, for professional services as nurse	30.00
MacMartin & Chamberlain, Inc., Undertakers.....	552.50
Mrs. Bessie Tweedy, for additional professional services as nurse.....	42.00
Jacky & Fiedler, Casket Spray and tax.....	10.20
Tillie Mullen, for labor.....	20.00
Depping's Dairy, milk and cream.....	9.67
Drs. Lyman & Whitney, for professional services during last illness.....	217.50
Walla Walla Farm Bureau, alfalfa seed.....	51.00
E. E. Reeve, chopped hay.....	19.60
<hr/>	
Total.....	\$ 970.47

IV.

That said estate comprising the community estate of decedent and Carrie Welch, his surviving spouse,

Exhibit "I"—(Continued)

has heretofore been duly inventoried and appraised in the total personal sum of \$452,607.95, as is evidenced by the Inventories and Appraisements thereof now on file with the Clerk of this Court, and by reference made a part hereof, as much so as if set forth herein verbatim for a particular description of said community real and personal estate.

V.

That attached hereto and marked Exhibit "A" is an itemized Report of cash receipts and disbursements on account of principal from April 21, 1937, to January 17, 1938, and likewise is attached hereto and marked Exhibit "B" is an itemized Report of cash receipts and disbursements on account of income from April 21, 1937 to January 17, 1938, reference to said Exhibits "A" and "B" being hereto made and to comprise a part hereof as much so as if set forth herein verbatim.

VI.

That attached hereto and marked Exhibit "C" is an itemized Report of cash receipts and disbursements on account of principal and income from January 17, 1938 to March 25, 1938, and by reference made a part hereof as much so as if set forth herein verbatim.

VII.

That attached hereto and marked Exhibit "D" and by reference made a part hereof as much so as if fully set forth herein verbatim, is a Stipulation

Exhibit "I"—(Continued)

bearing date the 7th day of April, 1938, made, executed and acknowledged between the said Baker-Boyer National Bank, of Walla Walla, Washington, in its present capacity as such Executor of the estate of decedent and likewise as residuary Trustee of decedent's estate, for the uses and purposes set forth in the Last Will and Testament and Codicil thereto of decedent on the one part and by Carrie Welch, the surviving spouse of decedent on the other part, wherein and whereby a partition and division of the community estate, real and personal, of decedent and the said Carrie Welch have been mutually agreed upon as an equitable distribution of the residue of said community estate therein particularly described, and/or referred to, which said Stipulation also includes decedent's community undivided one-half interest in the real estate specifically described on pages 12 and 13 of said Stipulation given and devised unto his son, Fred B. Welch, subject, however, to the life estate therein unto his mother, the said Carrie Welch, setting forth the real estate and personal property to be partitioned and distributed to the said Carrie Welch and the real estate and personal property to be distributed to the Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Trustee aforesaid, and decedent's community undivided one-half interest in the real estate to be distributed unto the said Fred B. Welch, subject to the life estate of the said Carrie Welch therein.

Exhibit "I"—(Continued)

VIII.

That the total amount of real estate and personal property stipulated to be set off to the said Carrie Welch, other than such personal property appraised at nil, is in the aggregate sum of \$174,974.35; that the total amount of real estate and personal property stipulated to be set off to the said Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Trustee aforesaid, other than such personal property appraised at nil, is in the aggregate sum of \$189,077.40.

IX.

That on March 25th, 1938, the aggregate of the community cash on hand belonging to the principal or corpus of said community estate is in the sum of \$37621.54 in checking acct. and \$31834.43 in the savings acct.

X.

That the following community personal property shown in the original Inventory and Appraisement of said estate, to-wit:

Transamerica Corporation Capital Stock Certificates

Certificate #SF/E	71827—100 shares
“	71828—100 shares
“	71829—100 shares
“	71830—100
#SF/D	76189— 10 shares

Total..... 410 shares

Appraised at\$6,508.75

Bancamerica-Blair Corporation Capital Stock

Certificates SFF79053 8 shares,

Appraised at 91.00

Exhibit "I"—(Continued)

is still on hand and undivided, but the present market value of all of said stock is less than the appraised valuations thereof, and in addition thereto there has come into the possession of said community estate during the administration thereof the following personal property, to-wit:

Bank of America Capital Stock Certificate
#A1972 41 shares.

(Received as distribution on Transamerica Stock).

XI.

That the following are the names of all the heirs at law of decedent, and each of them competent and of the age of majority, to-wit: Carrie Welch, the surviving spouse of decedent, residing at Walla Walla, Washington, Fred B. Welch, a son of decedent, residing in Walla Walla County, Washington, and George B. Allen, a grandson of decedent, residing at Seattle, Washington.

XII.

That the following are the names of all the legatees and devisees named and provided for in the Last Will and Testament of decedent, to-wit: The said Carrie Welch, the surviving spouse, residing at Walla Walla, Washington, the said Fred B. Welch, a son, residing in Walla Walla County, Washington, the said George B. Allen, a grandson, residing at Seattle, Washington, Tena Haas, formerly Tena Zuest, residing at Walla Walla, Washington, Mrs. Clara Pitt, residing at Oakland, California, Board of Confer-

Exhibit "I"—(Continued)

ence Claimants, Inc. of the Pacific Northwest Annual Conference, Methodist Episcopal Church, having its offices in Seattle, Washington, and the Baker-Boyer National Bank, of Walla Walla, Washington, in trust, for the uses and purposes set forth in said Last Will and Testament and Codicil thereto, reference in respect thereto being hereto made and to constitute a part hereof, as much so as if set forth herein verbatim.

XIII.

That the cash bequests of \$500.00 each unto the aforesaid Tena Haas, formerly Tena Zuest, and Mrs. Clara Pitt have been fully paid and due receipts taken therefor.

XIV.

That prior hereto the said Carrie Welch has caused to be filed with the Clerk of this Court her Petition praying that there be set off to her personal property of the value of \$3000.00 belonging to the community estate of decedent and herself be awarded and set off to her as such surviving spouse, and the hearing on her Petition has been set for Monday, the 11th day of April, 1938, and if the prayer of her Petition is granted by order of Court she will be entitled to have distributed unto her such personal property in said sum.

XV.

That said Executor has paid the Federal Estate Tax as computed by it in the sum of \$146.50, and likewise has paid the State Inheritance Tax as computed by it in the sum of \$685.51, but as yet no

Exhibit "I"—(Continued)

final audit of said Federal Estate Tax and said State Inheritance Tax has been made but acknowledgments of the payment of said respective amounts have been received from the Federal Treasury Department and from the Inheritance Tax and Escheat Division of the State of Washington. That the respective taxes when finally determined are a direct charge only against decedent's interest in said community estate.

XVI.

That \$5500.00 is a reasonable compensation to be allowed said Executor for its services herein, and that \$5500.00 is a reasonable attorney's fee to be allowed Marvin Evans for legal services rendered by him herein, and said respective fees are a charge against the entire community estate.

XVII.

That while the said Baker-Boyer National Bank, of Walla Walla, Washington, in its present capacity as such Executor and as such Trustee aforesaid, and the said Carrie Welch have stipulated the manner of the partition and distribution of that portion of said community estate affected thereby to be distributed to them respectively, said Executor, nevertheless, recommends that before the same is partitioned and set off to them by Decree of Distribution, the Court appoint at least three disinterested witnesses for the purpose of viewing such property and give their testimony at the final hearing herein, or at any adjourned hearing hereon, pursuant to

Exhibit "I"—(Continued)

Section 1533 of Remington's Revised Statutes of Washington in respect thereto.

XVIII.

That other than the final determination of the Federal Estate Tax and the State Inheritance Tax in the matter of the estate of decedent, said estate has been fully administered upon and is ready to be settled.

Wherefore, said Executor prays as follows:

1. That a time and place be fixed by an order of this Court for a hearing upon said Final Account and Report, and at the time and place fixed for said hearing, or at any adjourned hearing hereon, said Final Account and Report be allowed, approved and settled.

2. That there be allowed said Executor as its compensation herein the sum of \$5500.00, and that there be allowed Marvin Evans as attorney fees herein the sum of \$5500.00.

3. That there be distributed unto the said Carrie Welch an undivided one-half interest in the real estate described on pages 12 and 13 of said Stipulation and a life estate in the remaining undivided one-half thereof, and unto said Fred B. Welch said remaining undivided one-half thereof, subject to the life estate of his mother, the said Carrie Welch.

4. That three disinterested witnesses be appointed by this Court for the purpose of viewing the residue of said community estate and give their testimony before this Court in respect to the segregation, par-

Exhibit "I"—(Continued)

tition and distribution thereof to the said Carrie Welch and to the said Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Trustee aforesaid.

5. That there be distributed to the said Carrie Welch her proportion of said community estate in the manner set forth in said Stipulation, and that there be distributed to the said Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Trustee for each and every of the purposes set forth in decedent's said Last Will and Testament and Codicil thereto and said Stipulation the residue of said community estate pursuant to the terms of said Stipulation.

6. That said Executor continue in its capacity as such until the final determination of the Federal Estate Tax in the matter of said estate.

7. For such other and further order in the premises as to the Court may seem just and proper.

(Signed) MARVIN EVANS

Attorney for Estate

State of Washington

County of Walla Walla—ss.

N. A. Davis being first duly sworn on oath, deposes and says: That he is the Vice President of the Baker-Boyer National Bank, of Walla Walla, Washington, the Executor herein, and makes this verification for and on behalf of said Executor; that he has read the foregoing Final Account and Report

Exhibit "I"—(Continued)

and Petition for Distribution, knows the contents thereof and that the facts therein stated are true as he verily believes.

(Signed) N. A. DAVIS

Subscribed and sworn to before me this 7 day of April, 1938.

(Signed) MARVIN EVANS

Notary Public for Washington Residing at Walla Walla, Wash.

[Endorsed]: Filed Apr. 8, 1938.

EXHIBIT "J"

In the Superior Court of the State of Washington
In and for Walla Walla County

No. 26994

In the Matter of the Estate of

GEORGE T. WELCH, Deceased.

STIPULATION

Whereas, the undersigned, the Baker-Boyer National Bank, of Walla Walla, Washington, is the duly appointed, qualified and acting Executor of the estate of the above named George T. Welch, deceased, and likewise a residuary Trustee of his estate for the uses and purposes set forth in the Last Will and Testament and Codicil thereto of decedent, reference in respect thereto being hereto

Exhibit "J"—(Continued)

made and to constitute a part hereof, as much so as if set forth herein verbatim; and

Whereas, all the estate left by decedent comprised the community estate of himself and Carrie Welch, his surviving spouse, and upon his death one-half of said community estate goes to her, subject to the community debts and the expenses and charges of administration upon said community estate; and

Whereas, all claims against said estate and the cash bequests have been paid, including the Federal Estate Tax and State Inheritance Tax as computed by said Executor, and the estate of decedent is ready for settlement; and

Whereas, said Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as such Executor and Trustee, and the said Carrie Welch as such surviving spouse of decedent, have mutually agreed upon a mutual and equal distribution of the residue of said community estate, and after being fully advised of all their legal rights in respect thereto do hereby Stipulate and Agree upon a partition and division of said community estate between the respective parties hereto in manner following:

COMMUNITY REAL ESTATE

1. That there be distributed unto said Carrie Welch in her own separate right, the following described real estate situated in the County of Walla Walla, State of Washington, to-wit:

Exhibit "J"—(Continued)

Lot Twenty-three (23) of McAuliff's Addition to the City of Walla Walla, Washington, according to the official plat thereof of record in the office of the Auditor of said County of Walla Walla, excepting therefrom, however, the South five (5) feet of said Lot conveyed to the City of Walla Walla for the purpose of a public alley.

at the agreed valuation of \$1050.00.

Also: Beginning at a point in the Southerly line of Birch Street in the City of Walla Walla, Washington, which point is 140.65 feet Easterly, measured along said Southerly line of Birch Street from the point of its intersection with the Easterly line of Fourth Avenue South (formerly Fourth Street) in said City; thence North $60^{\circ} 10'$ East, along said Southerly line of Birch Street, a distance of 76.60 feet to a point which is South $60^{\circ} 10'$ West 80.25 feet from the Westerly line of Third Avenue South (formerly Third Street); thence South $26^{\circ} 33'$ East, parallel to said Westerly line of Third Avenue, a distance of 140.70 feet; thence South $60^{\circ} 10'$ West 69.75 feet; thence Northwesterly in a straight line 140.50 feet, more or less, to the point of beginning.

at the agreed valuation of \$2000.00.

Also: The Southeast quarter ($SE\frac{1}{4}$) of Section Twenty-five (25) in Township Twelve

Exhibit "J"—(Continued)

(12) North, of Range Thirty-five (35) East of the Willamette Meridian.

Containing 160 acres, according to the official plat of U. S. Government Survey.

Also: All of Section Thirty-six (36) in Township Twelve (12) North, of Range Thirty-five (35) East of the Willamette Meridian.

Containing 640 acres, according to the official plat of U. S. Government Survey.

Also: The fractional Northwest quarter ($NW\frac{1}{4}$) of Section Five (5) in Township Eleven (11) North, of Range Thirty-six (36) East of the Willamette Meridian, containing 159.12 acres, according to the official plat of U. S. Government Survey.

Also: The fractional North half ($N\frac{1}{2}$) of Section Six (6) in Township Eleven (11) North, of Range Thirty-six (36) East of the Willamette Meridian.

Containing 307.89 acres, according to official plat of U. S. Government Survey.

Excepting therefrom, however, the right of way of the Northern Pacific Railway Company over and across the West half of the Northwest quarter of said Section 6.

Leaving a net acreage of 302.78 acres, more or less.

Also: The fractional South half ($S\frac{1}{2}$) of Section Thirty-one (31) in Township Twelve (12) North, of Range Thirty-six (36) East of the Willamette Meridian.

Exhibit "J"—(Continued)

Containing 308.35 acres, according to the official plat of U. S. Government Survey.

Excepting therefrom the right of way of the Northern Pacific Railway Company over and across said premises.

Leaving a net acreage of 293.78 acres, more or less,

at the total agreed valuation of \$89,440.00.

Also: The West half ($W\frac{1}{2}$) of Section Twenty-eight (28) in Township Twelve (12) North, of Range Thirty-six (36) East of the Willamette Meridian.

Containing 320 acres, according to the official plat of U. S. Government Survey.

The East half ($E\frac{1}{2}$) of Section Twenty-nine (29) in Township Twelve (12) North, of Range Thirty-six (36) East of the Willamette Meridian.

Containing 320 acres, according to the official plat of U. S. Government Survey.

Excepting therefrom, however, the following described tract, to-wit:

Beginning at a point which is 30 feet East and 33 feet South of the Northwest corner of the Southeast quarter of said Section 29, and running thence South $12\frac{1}{2}$ rods; thence East $12\frac{1}{2}$ rods; thence North $12\frac{1}{2}$ rods, and thence West $12\frac{1}{2}$ rods to the point of beginning. Containing 1 acre, more or less.

Also excepting the right of way of the North-

Exhibit "J"—(Continued)

ern Pacific Railway Company over and across the West half of Northeast quarter of said Section 29,

at the total agreed valuation of \$35,145.00.

Also: Beginning at a point on the westerly line of Catherine Street in the City of Walla Walla, Washington, which point is 180.00 feet Southerly, measured along said Westerly line of Catherine Street, from the point of intersection of same with the Southerly line of Birch Street in said City; thence South $29^{\circ} 50'$ East along said westerly line of Catherine Street, a distance of 60.00 feet; thence South $60^{\circ} 10'$ West 123 feet and 8 inches; thence North $29^{\circ} 50'$ West 60.00 feet; thence North $60^{\circ} 10'$ East 123 feet and 8 inches to the point of beginning.

Being the Southerly 60 feet of Lot One (1) in Block Twenty-eight (28) of Roberts' Addition to the City of Walla Walla, according to the official plat thereof,

at the agreed valuation of \$5,500.00.

Also the following described real estate situated in the County of King, State of Washington, to-wit:

Lot Three (3) in Block Two (2) Highlands Addition to the City of Seattle, according to the official plat and survey thereof now on file and of record in the office of the County Auditor of said King County, Washington,

Exhibit "J"—(Continued)

at the agreed valuation of \$2500.00.

Grand total agreed valuation of real estate
\$135,635.00.

2. That there be distributed unto the Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Trustee aforesaid of the estate of decedent in its own separate right, the following described real estate, situated in the County of Walla Walla, State of Washington, to-wit:

The Northwest Quarter of the Northeast Quarter, the North Half of the Northwest Quarter and the Southwest Quarter of the Northwest Quarter of Section Two (2), the North Half of Section Three (3), the East Half and the Northwest Quarter of Section Nine (9), the North Half of Section Ten (10), and Section Eleven (11), all in Township Eleven (11), North of Range Thirty-five (35) East of Willamette Meridian, containing 1925.04 acres, more or less.

And in addition thereto the Northeast Quarter of Section Sixteen (16) in the aforesaid Township and Range held under lease from the State of Washington and known as the State School Land,

at the agreed valuation of \$76,652.00.

Also: The South half of the Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section One (1) in Township Six (6) North, of Range Thirty-five (35) East of the Willamette Meridian.

Exhibit "J"—(Continued)

Excepting therefrom the right of way of State Road No. 3 (Inland Empire Highway) along the North side of said premises and County Road.

Containing 77.60 acres, more or less.

Also, The Southwest quarter of the Southeast quarter of Section One (1) in Township Six (6) North, of Range Thirty-five (35) East of the Willamette Meridian.

Excepting therefrom the right of way of State Road No. 3 (Inland Empire Highway) along the North side of said premises.

Containing 39.40 acres, more or less.

Also: The Southeast quarter of the Southeast quarter ($SE\frac{1}{4}SE\frac{1}{4}$) of Section Two (2) in Township Six (6) North, of Range Thirty-five (35) East of the Willamette Meridian.

Excepting therefrom the right of way of State Road No. 3 (Inland Empire Highway) along the North side of said premises.

Containing 39.10 acres, more or less.

Also: The West half of the Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$) of Section Twelve (12) in Township Six (6) North, of Range Thirty-five (35) East of the Willamette Meridian. Excepting County road along West side.

Containing 78.20 acres, more or less,

at the total agreed valuation of \$16,958.16.

Grand total agreed valuation of real estate \$93,610.16.

Exhibit "J"—(Continued)

COMMUNITY PERSONAL ESTATE

3. That there be distributed unto the said Carrie Welch the following described personal property, to-wit:

Balance against one-third share in 900 acres 1937 wheat crop valued at.....	\$ 1,186.50
Walla Walla Canning Company first mortgage Leaschold 6% Bonds of 5/1/46, Numbered 3, 4 and 5 at \$1000.00 each, valued at.....	3,000.00
Northwest Toll Bridge Co. 5% Debenture of 1/1/46 (\$600.00 P. V.) Bond #DC337, val- ued at	180.00
Household goods and personal effects, valued at	757.10
Automobile, valued at.....	1,000.00
Overdraft on 1937 income.....	559.80
Stocks:	
Walla Walla Canning Company Capital Stock (non par)	
Certificate # 75—2 shares	
" #186—2 shares	
" #304—1 share	
—	
Total valuation	375.00
Walla Walla Canning Company Preferred Stock (100 par) 5 shares of Certificate #151, valued at	500.00
Milton Box Company Capital Stock (100 par) 12½ shares in Certificate #138, val- ued at	1,250.00
Walla Walla Farmers Agency Capital Stock (100 par) Certificate #70—20 shares	
" #98— 4 shares valued at.....	960.00

Exhibit "J"—(Continued)

Walla Walla Farmers Exchange Capital Stock (\$10.00 par)	
Certificate #150—15 shares	
" #285—23 shares	
" #286—57 shares	
" #287—20 shares	
" #293—46 shares	
" #294—57 shares	
Total.....	218 shares
	Valued at.....
	218.00
Gas Ice Corporation common stock (non par)	
Certificate # 51—250 shares	
75 shares in	
Certificate #171, total 325 shares,	
	Valued at.....
	325.00
Klickitat Mineral Springs, Inc. Capital Stock (non par)	
Certificate #24—250 shares,	
	Valued at.....\$
	125.00
Tum-a-Lum Lumber Company 4% Preferred Stock (100 par)	
50 shares in Certificate #18	
	Valued at.....
	4,000.00
Consolidated Securities Company Common Stock (non par) 2½ shares in Certificate #116	
	Valued at.....
	62.50
Walla Walla Grain Growers 7½ shares P.V. \$30.00 per share,	
	Valued at.....
	7.50
Consolidated Securities Company Participation Certificates	
40% remaining unpaid on Certificate	
Face \$1236.07, 40% remaining unpaid on	
Certificate Face \$12,891.40,	
	Total valuation.....
	2,542.95
Mortgage Loans:	
Friederich and Mamie Schmidt,	
Face originally \$2500.00,	
dated 7/15/25 due 7/15/35, interest 6%	
	Valued at.....
	600.00

Exhibit "J"—(Continued)

Oliver T. Cornwell, et al.

Face \$10,500.00

Dated 12/1/33 due 12/1/38, interest 6% annually,

Valued at..... 10,500.00

Jacky & Fiedler, Inc.

Face \$5500.00

Dated 6/12/35 due 6/12/40, interest 7%
semi-annually,

Valued at..... 5,500.00

Notes:

Milton Box Company

One note \$4000.00 dated 5/9/34 due 11/9/34,
Int. 8%

Valued at..... 4,000.00

C. H. & C. B. Harris note,

Face 1500.00, dated 5/1/33 due 5/1/42
interest 5%

Valued at..... 1,500.00

Elizabeth Bellingham

Face \$1000.00, dated 2/14/20 due 2/14/21
Int. 6%, on which substantial amounts of
principal and interest have been paid,

Valued at..... 190.00

Additional Stock:

Northwest Toll Bridge Co. Capital Stock
(non par) 10 shares in Certificate No. 238.

Wauna Toll Bridge Co. Preferred Stock
(100 par) 53 shares in Certificate No. 68.

Wauna Toll Bridge Co. Common Stock
(non par)

Certificate No. 103—50 shares

“ No 356— 3 shares

23 shares in

Certificate No. 351

—
Total 76 shares

Grand total agreed valuation of personal

property\$ 39,339.35

4. That there be distributed unto the Baker-Boyer National Bank, of Walla Walla, Washing-

Exhibit "J"—(Continued)

ton, in its capacity as Trustee aforesaid of the estate of decedent in its own separate right, the following described personal property, to-wit:

Agreement in writing of date March 18, 1938, between the Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Executor of the estate of George T. Welch, deceased, during the administration upon decedent's estate in court and subsequent thereto as Trustee of decedent's estate, and Carrie Welch, the surviving spouse of the said George T. Welch, deceased, to sell and convey to Guy Nelson and Hazel L. Nelson, his wife, the following described lands and premises, situated in the City and County of Walla Walla, State of Washington, to-wit:

Beginning at a point in the Southerly line of Birch Street in the City of Walla Walla, Washington, which point is 140.65 feet Easterly, measured along said Southerly line of Birch Street from the point of its intersection with the Easterly line of Fourth Avenue South (formerly Fourth Street) in said City; thence South $60^{\circ} 10'$ West, along said Southerly line of Birch Street, a distance of 82.65 feet to a point in a line drawn parallel to and distant 58.00 feet Easterly, measured at right angles, from said Easterly line of Fourth Avenue South; thence South $29^{\circ} 50'$ East, along said parallel line, a distance of 140.47 feet; thence North $60^{\circ} 10'$ East 69.57 feet; thence South $26^{\circ} 33'$ East 20.00 feet; thence North $60^{\circ} 10'$ East 12.00 feet; thence North $26^{\circ} 33'$ West 20.00 feet; thence Northwesterly in

Exhibit "J"—(Continued)

a straight line 140.50 feet, more or less, to the point of beginning;

Together with all the personal property therein contained, consisting chiefly of all carpets fitted and attached to floors and stairways, and one gas range in the residence upon the premises above described, on which there is remaining unpaid on the agreed purchase price therefor the sum of \$3200.00, subject to the terms and conditions in said Agreement set forth, at the agreed valuation of \$3200.00.

Bonds:

Federal Farm Mortgage Corporation 3% of 44/49 Registered \$1300 P. V. Bond #4918J 1 at \$1000. #6806F, #6807H, #6808J 3 at \$100. at the agreed valuation of.....\$	1,316.25
Walla Walla Funding Water Extension 4½% of 7/1/54 \$10,000 P. V. Bonds #371 to #380, inclusive, 10 at \$1000, at the agreed valuation of.....	10,400.00
Gardena Farms District #13 Walla Walla Co., 6% P. V. 5500 Series M. Bond #53 due 7/1/44 1 at \$500. Series N Bond # 56, 57, 59, 60, 61, 62, 63, 64, due 7/1/45 8 at \$500, Series O Bond 65, 70 due 7/1/46 2 at \$500. at the agreed valuation of.....	5,500.00
Walla Walla Canning Company First Mortgage Leasehold 6% of 5/1/46 \$2000.00 P. V. Bonds 6 and 7 at \$1000.00. at the agreed valuation of.....	2,000.00
Northwest Toll Bridge Company 5% Debenture of 1/1/46 \$600. P. V. Bond #DC338 at \$600., at the agreed valuation of.....	180.00

Exhibit "J"—(Continued)

Participation Certificate:

National Bondholders Corporation Participation Certificate Mortgage, Guarantee, Series A-1 No. MGA 1 #700 to 709, 10 at \$1000. Face Value \$10,000. Paid on principal 41% at the agreed valuation of.....\$ 2,500.00

National Bondholders Corporation Participation Certificate,
Central Funding Series B
CFB 531, 2442, 2443, 3 at \$1000. Face \$3000. Paid on principal 45%,
at the agreed valuation of..... 780.00

National Bondholders Corporation Participation Certificate
Central Funding Series C
CFC 1855 to 1862, inclusive, 8 at \$1000. Face \$8000.
Paid on Principal 45%,
at the agreed valuation of..... 2,080.00

National Bondholders Corporation Participation Certificate Central Funding Series D
CFD 1960, 1961 2 at \$1000. Face \$2000.
Paid on Principal 45%,
at the agreed valuation of..... 520.00

National Bondholders Corporation Participation Certificate Mortgage Bond Series E
MBE 58 1 at \$500. Face,
MBE 522 to 524, inclusive,
MBE 582, 730, 731, 969,
MBE 1063, 1419, 1435, 1436 11 at \$1000. Face \$11,500.
Paid on Principal 46%,
at the agreed valuation of..... 2,530.00

National Bondholders Corporation Participation Certificate,
Southern Securities Series A
SSNU4 1 at \$500. Face \$500.
Paid on Principal 55%,
at the agreed valuation of..... 85.00

Exhibit "J"—(Continued)

National Bondholders Corporation Participation Certificate	
Investors Mortgage Series D	
IMD 51, 52, 2 at \$1000 Face \$2000.	
Paid on Principal 41%	
at the agreed valuation of.....	\$ 340.00
National Bondholders Corporation Participation Certificate,	
Union Mortgage Series G	
UMG 419, 420, 421 3 at \$1000 Face—\$3000.	
Paid on Principal 64%,	
at the agreed valuation of.....	270.00
National Bondholders Corporation Participation Certificate, Central Funding Series A	
CFA104,241, 2 at \$500. Face CFA 1569 1 at \$1000.—\$2000.	
Paid on principal 45%,	
at the agreed valuation of.....	520.00
Walla Walla Canning Company Capital Stock (non par) Certificate #435—5 shares	
at the agreed valuation of.....	375.00
Walla Walla Canning Company Preferred Stock (100 par) 5 shares in Certificate #151	
at the agreed valuation of.....	500.00
Milton Box Company Capital Stock (100 par) 12½ shares in Certificate #138,	
at the agreed valuation of.....	1,250.00
Walla Walla Farmers Exchange Capital Stock (\$10.00 par)	
Certificate # 18—100 shares	
" #281—125 shares	
Total.....	225 shares
at the agreed valuation of.....	225.00

Exhibit "J"—(Continued)

Walla Walla Farmers Agency Capital Stock
(\$100.00 par)

Certificate #115— 2 shares
 " #116— 2 shares
 " #129— 4 shares
 " #139—16 shares

—————
 Total..... 24 shares

at the agreed valuation of.....\$ 960.00

Northwest Toll Bridge Co. Capital Stock
 (non par) 10 shares in Certificate No. 238.

Wauna Toll Bridge Co. Preferred Stock
 (100 par) 53 shares in Certificate No. 68.

Wauna Toll Bridge Co. Common Stock
 (non par) 77 shares in Certificate No. 351.

Gas Ice Corporation Common Stock (non par)
 325 shares in Certificate #171,

at the agreed valuation of.....\$ 325.00

Klickitat Mineral Springs Inc. Capital Stock
 (non par) Certificate #56 250 shares,

at the agreed valuation of.....\$ 125.00

Tum-a-Lum Lumber Company 4% Preferred
 Stock (100 par) 50 shares in Certificate #18,

at the agreed valuation of.....\$ 4,000.00

Consolidated Securities Company Common
 Stock (non par) 2½ shares in Certificate #116

at the agreed valuation of.....\$ 62.50

Walla Walla Grain Growers

7½ shares, P. V. \$30.00,

at the agreed valuation of.....\$ 7.50

Consolidated Securities Company Participa-
 tion Certificate, 40% remaining unpaid on Cer-
 tificate Face \$1236.07, 40% remaining unpaid
 on Certificate Face \$12,891.40,

at the agreed valuation of.....\$ 2,542.95

Exhibit "J"—(Continued)

Mortgage Loans:

Marvin Evans

Face \$16,000.00, Interest 5%

Paid on principal \$6000.00,

Dated 11/2/32 due 12/15/38

at the agreed valuation of.....\$ 10,000.00

Cleve and Lucy B. Prather,

Face \$750.00, Interest 6%

Dated 10/1/30 due 10/1/32

at the agreed valuation of..... 774.38

Notes:

Henry H. and Flora Moore Bennett,

Face \$1000.00, Interest 7%

Paid on principal \$2.50

Dated 10/9/37 due 10/9/38

at the agreed valuation of..... 997.50

J. T. Crawford,

Face \$10,000.00, Interest 6%

Dated 11/14/32 due 11/14/37

at the agreed valuation of..... 10,000.00

Milton Box Company,

One note for \$4000.00

Dated 5/9/34 due 11/9/34 Interest 8%

at the agreed valuation of..... 4,000.00

C. H. and C. B. Harris,

Face \$2250.00, Interest 5%

Dated 5/1/33 due 5/1/41

at the agreed valuation of..... 2,250.00

W. W. Harvey

Face \$12,000.00, Interest 5%

Dated 6/24/37 taken in lieu of lost or mis-
placed promissory note

at the agreed valuation of..... 2,222.16

Miscellaneous:

One-third interest in cattle on ranch rented
to E. E. Reeve,

at the agreed valuation of..... 125.00

Exhibit "J"—(Continued)

One-third-interest in hog on ranch rented to E. E. Reeve, at the agreed valuation of.....	4.00
Naimy-Winget first Mtge. Bond, at the agreed valuation of	2,500.00
Glen A. Smith, R. E. Mtge. Loan, at the agreed valuation of	20,000.00
Grand Total agreed valuation of Personal Property	\$ 95,467.24

State Line Telephone Co. Capital Stock

(100 par) Certificate #721 $\frac{1}{4}$ share

5. Cash on hand at time of distribution belonging to the corpus of this estate to be divided equally after reserving sufficient therefrom for administration expenses and equalizing the total value of the property as shown by the agreed division pursuant to the terms of this Stipulation, with the understanding, however, that there shall be charged separately against the George T. Welch estate any sums paid or to be paid on account of State Inheritance or Federal Estate Taxes thereon.

6. The following described lands in Walla Walla County, State of Washington, to-wit:

Beginning at a point on the East line of Section 33, in Township 7 North, of Range 34 East of the Willamette Meridian, which is 10 chains North of the quarter corner on the East side of said Section 33; thence North on the East line of said Section 33 and the East line of Section 28, said Township and Range, to a point in the East line of said Section 28, which is 50 feet South of the center line

Exhibit "J"—(Continued)

of the main track of the Walla Walla and Columbia River Railroad (Oregon Railroad and Navigation Company) measured on a line drawn at right angles to said center line; thence Westerly on a line drawn parallel to and distant 50 feet Southerly from said center line of said Railroad, to a point in the North and South center line of said Section 28, thence South and on said center line of said Section 28 and the center line of Section 33 aforesaid, to a point in said center line of Section 33, which is 10 chains North of the center point of said Section 33, thence East 39.32 chains to the point of beginning.

Also: Beginning at a point in the North line of the Louis Daunev Donation Claim, which is 60 feet West of the point of intersection of said North line with the North and South center line of Section 28, Tp. 7 N. R. 34, E.W.M.; thence West 4.50 chains; thence South 14.95 chains; thence North $72^{\circ} 20'$ West 6.84 chains; thence South 7.42 chains to the Walla Walla River; thence following the meanderings of said River in a general Easterly direction, and along its North bank as follows:— N. $56^{\circ} 29'$ E. 2.07 chains; N. $83^{\circ} 24'$ E. 2.49 chains; thence S. $36^{\circ} 54'$ E. 1.50 chains; thence S. $10^{\circ} 06'$ E. 4.32 chains; thence S. $76^{\circ} 12'$ E. 1.19 chains; thence N. $20^{\circ} 23'$ E. 7.40 chains; thence N. $75^{\circ} 13'$ E. to a point on the North bank of said River which is 60 feet West of said North and South center line of Section 28, measured on a line at right angles there-

Exhibit "J"—(Continued)

to; thence North 18.35 chains to the point of beginning.

Together with all easements, rights of way, water and water rights thereunto belonging or appurtenant to the lands and premises above described.

Said Louis Daunev Donation Claim being Claim No. 38, according to the Official Plat thereof in the office of the Surveyor General of the United States and being parts of Sections 28, 29, 32 and 33 in Township seven (7) North, of Range thirty-four (34) East of the Willamette Meridian.

Excepting therefrom the right of way of the Oregon-Washington Railroad and Navigation Company, formerly Walla Walla and Columbia River Railroad Company, shall be distributed unto said Carrie Welch an undivided one-half thereof and a life estate in the remaining undivided one-half thereof and unto Fred B. Welch, son of said deceased, said remaining undivided one-half thereof, subject to the life estate of his mother, the said Carrie Welch.

7. Any property of the corpus of this estate, real or personal, for the distribution of which no provision has been made hereinbefore, shall be distributed in equal shares to the undersigned, Carie Welch and the Baker-Boyer National Bank, of Walla Walla, Washington, as Trustee aforesaid.

8. All the rents, issues and profits of and from all of the property of this estate accruing since the death of said George T. Welch and up to the time of entry of Decree of Distribution, less payments

Exhibit "J"—(Continued)

thereof heretofore made to said Carrie Welch, and also less general property taxes and other expenses properly payable and paid out of said income, shall be distributed to said Carrie Welch.

9. All of the rents, issues and profits of and from all cash and other property, real and personal, distributed pursuant to this Stipulation to said Baker-Boyer National Bank, as Trustee aforesaid, after deducting therefrom all charges and expenses properly payable therefrom, shall be by said Trustee paid over to said Carrie Welch during the remainder of her natural life, said payments to be made semi-annually or at shorter intervals when convenient and reasonable. It is understood that the compensation to be paid said Bank as such Trustee for its services herein shall be one-half of one per cent per annum of the value of said trust estate for all services incidental to the collection and distribution of such rents, issues and profits during the remainder of her natural life.

In Witness Whereof the said Baker-Boyer National Bank, of Walla Walla, Washington, as such Executor aforesaid and as such Trustee, as hereinbefore provided, by resolution of its Board of Directors, hath caused these presents to be subscribed by N. A. Davis, its Vice President, and by W. G. Shuham, its Cashier, and its corporate name and seal to be hereunto affixed in quadruplicate, and the said Carrie Welch has likewise hereunto set

Exhibit "J"—(Continued)

her hand and seal in quadruplicate this 7 day of April, 1938.

[Seal]

BAKER-BOYER NATIONAL
BANK OF WALLA WALLA,
WASHINGTON

By N. A. DAVIS

[Seal]

Its Vice President

Attest: W. G. SHUHAM

Its Cashier

As Executor of the Estate of
George T. Welch, Deceased,
and as such Trustee afore-

[Seal]

said.

CARRIE WELCH

State of Washington

County of Walla Walla—ss.

On this 7 day of April, 1938, before the undersigned, a Notary Public in and for said County and State, personally appeared N. A. Davis and W. G. Shuham, to me known to be the Vice President and Cashier, respectively, of the Baker-Boyer National Bank, of Walla Walla, Washington, the corporation that executed the within and foregoing Stipulation as Executor of the estate of the above named George T. Welch, deceased, and as Trustee aforesaid, and they each acknowledged to me that they subscribed the within and foregoing Stipulation as such Vice President and Cashier, respectively, for and on behalf of said corporation, for the uses and purposes therein mentioned, and on oath stated that

Exhibit "J"—(Continued)

they were authorized to execute said Stipulation for and on behalf of said corporation, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first in this certificate above written.

MARVIN EVANS

Notary Public in and for the
State of Washington, Re-
siding at Walla Walla,
Washington.

State of Washington
County of Walla Walla—ss.

On this day personally appeared before me Carrie Welch, to me known to be the individual described in and who executed the within and foregoing Stipulation, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 7th day of April, 1938.

JOHN F. WATSON

Notary Public in and for the
State of Washington, Re-
siding at Walla Walla,
Washington.

EXHIBIT "K"

In the Superior Court of the State of Washington,
In and for Walla Walla County

No. 26994

In the Matter of the Estate of
GEORGE T. WELCH, Deceased

FINAL DECREE

Now on this 9th day of May, 1938, at the hour of two o'clock in the afternoon, coming on regularly for hearing in open court upon the Final Account and Report and Petition for Distribution now on file herein of the Baker-Boyer National Bank, of Walla Walla, Washington, as Executor of the estate of the above named George T. Welch, deceased, said Executor appearing by N. A. Davis, its Vice President, and by Marvin Evans, as its attorney herein, and Carrie Welch, the surviving spouse of decedent, appearing by John F. Watson, her attorney of record herein, and it appearing to the Court on due and sufficient proof and the Court does herein find that due and legal notice of the hearing upon said Final Account and Report and Petition for Distribution has heretofore been given by posting and by publication and as by law required and in full compliance with the Order of this Court heretofore made and entered herein on the 8th day of April, 1938, as is evidenced by the proof of posting and of publication of said notice now on file with the Clerk of this Court, and by

Exhibit "K"—(Continued.)

reference made a part hereof as much so as if set forth herein verbatim; that Notice to Creditors in the matter of said estate has heretofore been duly published for the time and in the manner required by law as is evidenced by the proof of publication of said Notice to Creditors now on file with the Clerk of this Court, and by reference made a part hereof as much so as if set forth herein verbatim; that the first publication of said Notice to Creditors was on the 21st day of April, 1937, and more than six months have elapsed since the first publication thereof.

That the time for serving and filing of claims against said estate has fully expired; that within the time so limited for the serving and filing of claims against the estate of decedent the following claims were duly served and filed with the Clerk of Court and thereafter presented to said Executor and allowed by it, and likewise allowed and approved by the Court, to-wit:

Mrs. Bessie Tweedy for professional services as nurse	\$ 18.00
Agnes Newhouse, for professional services as nurse	30.00
MacMartin & Chamberlain, Inc., Undertakers.....	552.50
Mrs. Bessie Tweedy, for additional professional services as nurse	42.00
Jacky & Fiedler, Casket Spray and tax.....	10.20
Tillie Mullen, for labor.....	20.00
Depping's Dairy, milk and cream.....	9.67
Drs. Lyman & Whitney, for professional services during last illness.....	217.50
Walla Walla Farm Bureau, alfalfa seed.....	51.00
E. E. Reeve, chopped hay.....	19.60
Total.....	\$ 970.47

Exhibit "K"—(Continued.)

and that each of said claims have been fully paid and discharged.

That all the obligations owing by decedent at the time of his death, including the expenses of his last sickness and burial, have been fully paid.

That the estate of decedent, comprising the community estate of himself and his said surviving spouse, Carrie Welch, has been duly inventoried and appraised as is evidenced by the Inventory and Appraisement thereof now on file with the Clerk of this court, reference to said Inventory and Appraisement for a particular description of the real estate and personal property comprising said community estate being hereto referred to and to constitute a part hereof as much so as if set forth herein verbatim.

That said Final Account and Report is in all respects true and correct and the same should be allowed, approved and settled.

That subsequent to the filing of said Final Account and Report said Executor has necessarily expended the following sums which are a direct charge against said community estate, to-wit:

April 1, 1938, To Carrie Welch, monthly allowance	\$ 300.00
Apr. 11, 1938, Amount allowed Carrie Welch as surviving spouse of decedent..	3,000.00
Apr. 25, 1938, Publication of Notice of Final Hearing	6.42
May 2, 1938, To Carrie Welch, monthly allowance	300.00
May 3, 1938, Final Clerk's fee.....	5.00
Total.....	<u>\$3,611.42</u>

Exhibit "K"—(Continued.)

That said Carrie Welch should be charged with that portion of said May, 1938 monthly allowance accruing subsequent to May 9 thereof.

That any collections made or expenses incurred on properties to be distributed subsequent to the date of the filing of the Final Account and Report herein shall be credited or charged to the party to whom such property is to be distributed pursuant to the terms of the hereinafter referred to Stipulation.

That attached to said Final Account and Report and Petition for Distribution and marked Exhibit "D" and made a part of said Final Account and Report, as much so as if fully set forth therein verbatim, is a Stipulation bearing date the 7th day of April, 1938, made, executed and acknowledged between the said Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as such Executor of the estate of decedent, and likewise as residuary Trustee of decedent's estate for the uses and purposes set forth in the Last Will and Testament and Codicil of decedent, and by Carrie Welch, the surviving spouse of decedent, in which said Stipulation the said Bank, as such Executor and Trustee, was represented by Marvin Evans as its attorney therein, and said Carrie Welch was represented by John F. Watson, as her attorney therein, wherein and whereby a partition and division of the community estate of decedent and the said Carrie Welch, real and personal, therein particularly de-

Exhibit "K"—(Continued.)

scribed and/or referred to, and hereinafter in this Decree particularly described, have been mutually agreed upon as an equitable and just distribution thereof.

That Martin Stearns, Bert Witt and Fred Lasater, appointed by Order of this Court to view the property to be partitioned and distributed herein, have viewed same, and now testifying in open court recommend that there be partitioned and distributed to the said Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Trustee herein, the real estate and personal property described and referred to in said Stipulation and hereinafter particularly described, to be so partitioned and distributed to it, in its just, *just*, fair and equitable division of said community property, and that there be partitioned and distributed to the said Carrie Welch the real estate and personal property described and referred to in said Stipulation and hereinafter particularly described, to be so partitioned and distributed to her, is her just, fair and equitable division thereof, and that the terms and provisions of said Stipulation are just and equitable.

And it further appearing to the Court and the Court does herein find that the real estate and personal property described and referred to in said Stipulation therein mutually agreed upon as aforesaid to be partitioned and distributed to the said Baker-Boyer National Bank, of Walla Walla, Washington, as such Trustee, and to the said Carrie

Exhibit "K"—(Continued.)

Welch, is a just, fair and equitable division thereof to be partitioned and distributed to them respectively, and the Court does hereby fix and adopt the values of the several pieces and parcels of property as set forth and agreed upon in said Stipulation as being, in the light of the evidence, the fair and reasonable value thereof.

That the following are the names of all the heirs at law, each of them competent and of the age of majority, to-wit: Carrie Welch, the surviving spouse of decedent, residing at Walla Walla, Washington, Fred B. Welch, a son of decedent, now residing at College Place, Washington, and George B. Allen, a grandson of decedent, residing at Seattle, Washington.

That the following are the names of all the legatees and devisees named and provided for in the Last Will and Testament of decedent and Codicil thereto, to-wit: The said Carrie Welch, the said Fred B. Welch, the said George B. Allen, and in addition thereto Tena Haas, formerly Tena Zuest, residing at Walla Walla, Washington, Mrs. Clara Pitt, residing at Oakland, California, Board of Conference Claimants, Inc. of the Pacific Northwest Annual Conference, Methodist Episcopal Church, having its offices in Seattle, Washington, and the Baker-Boyer National Bank, of Walla Walla, Washington, in trust for the uses and purposes set forth in said Last Will and Testament and Codicil thereto and hereinafter specifically set forth.

That the cash bequests of \$500.00 each to the said

Exhibit "K"—(Continued.)

Tena Haas, formerly Tena Zuest, and to Mrs. Clara Pitt have been fully paid.

That \$5500.00 is a reasonable compensation to be allowed said Executor for its services herein; that \$5500.00 is a reasonable attorney's fee to be allowed Marvin Evans for legal services rendered by him herein.

That other than the final determination of the Federal Estate Tax and the State Inheritance Tax herein said estate has been fully administered upon and is ready to be closed.

And the Court being fully advised in the premises and now on motion of Marvin Evans, as attorney for said Executor, and no objections having been made or filed herein;

It Is Therefore Considered, Ordered, Adjudged and Decreed as follows:

1. That said Final Account and Report and said Supplemental Account be and the same hereby are in all respects allowed, approved and settled.

2. That there be and there hereby is allowed the Baker-Boyer National Bank, of Walla Walla, Washington, for its compensation as such Executor herein the sum of \$5500.00, and that there be and there hereby is allowed Marvin Evans for legal services rendered by him herein the sum of \$5500.00

3. That pursuant to the provisions of the aforesaid referred to Stipulation bearing date the 7th day of April, 1938, there be and there hereby is distributed unto the said Carrie Welch in her own

Exhibit "K"—(Continued.)

separate right the following described real estate situated in the County of Walla Walla, State of Washington, to-wit:

Lot Twenty-three (23) of McAuliff's Addition to the City of Walla Walla, Washington, according to the official plat thereof of record in the office of the Auditor of said County of Walla Walla, excepting therefrom, however, the South five (5) feet of said Lot conveyed to the City of Walla Walla for the purpose of a public alley,
at the agreed valuation of.....\$ 1,050.00

Also: Beginning at a point in the Southerly line of Birch Street in the City of Walla Walla, Washington, which point is 140.65 feet Easterly, measured along said Southerly line of Birch Street from the point of its intersection with the Easterly line of Fourth Avenue South (formerly Fourth Street) in said City; thence North 60° 10' East, along said Southerly line of Birch Street, a distance of 76.60 feet to a point which is South 60° 10' West 80.25 feet from the Westerly line of Third Avenue South (formerly Third Street); thence South 26° 33' East, parallel to said Westerly line of Third Avenue, a distance of 140.70 feet; thence South 60° 10' West 69.75 feet; thence Northwesterly in a straight line 140.50 feet, more or less, to the point of beginning,
at the agreed valuation of.....\$ 2,000.00

Also: The Southeast quarter (SE1/4) of Section Twenty-five (25) in Township Twelve (12) North, of Range Thirty-five (35) East of the Willamette Meridian.

Containing 160 acres, according to the official plat of U. S. Government Survey.

Also: All of Section Thirty-six (36) in Township Twelve (12) North, of Range Thirty-five (35) East of the Willamette Meridian.

Containing 640 acres, according to the official plat of U. S. Government Survey.

Exhibit "K"—(Continued.)

Also: The fractional Northwest quarter (NW $\frac{1}{4}$) of Section Five (5) in Township Eleven (11) North, of Range Thirty-six (36) East of the Willamette Meridian, containing 159.12 acres, according to the official plat of U. S. Government Survey.

Also: The fractional North half (N $\frac{1}{2}$) of Section Six (6) in Township Eleven (11) North, of Range Thirty-six (36) East of the Willamette Meridian.

Containing 307.89 acres, according to official plat of U. S. Government Survey.

Excepting therefrom, however, the right of way of the Northern Pacific Railroad Company over and across the West half of the Northwest quarter of said Section 6.

Leaving a net acreage of 302.78 acres, more or less.

Also: The fractional South half (S $\frac{1}{2}$) of Section Thirty-one (31) in Township Twelve (12) North, of Range Thirty-six (36) East of the Willamette Meridian.

Containing 308.35 acres, according to the official plat of U. S. Government Survey.

Excepting therefrom the right of way of the Northern Pacific Railway Company over and across said premises.

Leaving a net acreage of 293.78 acres, more or less, at the total agreed valuation of.....\$ 89,440.00

Also: The West half (W $\frac{1}{2}$) of Section Twenty-eight (28) in Township Twelve (12) North, of Range Thirty-six (36) East of the Willamette Meridian.

Containing 320 acres, according to the official plat of U. S. Government Survey.

The East half (E $\frac{1}{2}$) of Section Twenty-nine (29) in Township Twelve (12) North, of Range Thirty-six (36) East of the Willamette Meridian.

Containing 320 acres, according to the official plat of U. S. Government Survey.

The East half (E $\frac{1}{2}$) of Section Twenty-nine (29) in Township Twelve (12) North, of Range Thirty-six (36) East of the Willamette Meridian.

Containing 320 acres, according to the official plat of U. S. Government Survey.

Excepting therefrom, however, the following de-

Exhibit "K"—(Continued.)

Beginning at a point which is 30 feet East and 33 feet South of the Northwest corner of the Southeast quarter of said Section 29, and running thence South 12½ rods; thence East 12½ rods; thence North 12½ rods, and thence West 12½ rods to the point of beginning, containing 1 acre, more or less.

Also excepting the right of way of the Northern Pacific Railway Company over and across the West half of Northeast quarter of said Section 29,
at the total agreed valuation of.....\$ 35,145.00

Also: Beginning at a point on the westerly line of Catherine Street in the City of Walla Walla, Washington, which point is 180.00 feet Southerly, measured along said Westerly line of Catherine Street, from the point of intersection of same with the Southerly line of Birch Street in said City; thence South 29° 50' East along said westerly line of Catherine Street, a distance of 60.00 feet; thence South 60° 10' West 123 feet and 8 inches; thence North 29° 50' West 60.00 feet; thence North 60° 10' East 123 feet and 8 inches to the point of beginning.

Being the Southerly 60 feet of Lot One (1) in Block Twenty-eight (28) of Roberts' Addition to the City of Walla Walla, according to the official plat thereof,
at the agreed valuation of.....\$ 5,500.00

Also the following described real estate situated in the County of King, State of Washington, to-wit:

Lot Three (3) in Block Two (2) Highlands Addition to the City of Seattle, according to the official plat and survey thereof now on file and of record in the office of the County Auditor of said King County, Washington, at the agreed valuation of.....\$ 2,500.00
making a grand total of the agreed valuation of real estate herein distributed unto her in the sum of.....\$135,635.00

Exhibit "K"—(Continued.)

And that there likewise be and there hereby is distributed unto her, the said Carrie Welch, in her own separate right, the following described personal property, to-wit:

Balance against one-third share in 900 acres 1937 wheat crop, valued at.....	\$	1,186.50
Walla Walla Canning Company first mortgage Leasehold 6% Bonds of 5/1/46, Numbered 3, 4 and 5 at \$1000.00 each, valued at.....	\$	3,000.00
Northwest Toll Bridge Co. 5% Debenture of 1/1/46 (\$600.00 P. V.) Bond #DC337, valued at..	\$	180.00
Household goods and personal effects, valued at..	\$	757.10
Automobile, valued at.....	\$	1,000.00
Overdraft on 1937 income.....	\$	559.80

Stocks:

Walla Walla Canning Company Capital Stock
(non par)

Certificate # 75—2 shares
 " #186—2 shares
 " #304—1 share

—————
 Total valuation.....\$ 375.00

Walla Walla Canning Company Preferred Stock
(100 par) 5 shares of Certificate #151, valued at..\$ 500.00

Milton Box Company Capital Stock (100 par)
12½ shares in Certificate #138, valued at.....\$ 1,250.00

Walla Walla Farmers Agency Capital Stock (100 par)
 Certificate #70—20 shares
 " #98— 4 shares
 valued at..... 960.00

Walla Walla Farmers Exchange Capital Stock
(10.00 par)

Certificate #150— 15 shares
 " #285— 23 shares
 " #286— 57 shares
 " #287— 20 shares
 " #293— 46 shares
 " #294— 57 shares

—————
 Total..... 218 shares

Valued at..... 218.00

Exhibit "K"—(Continued.)

Gas Ice Corporation common stock (non par)	
Certificate # 51—250 shares	
75 shares in	
Certificate #171, total 325 shares,	
Valued at.....	325.00
Klickitat Mineral Springs, Inc. Capital Stock (non par)	
Certificate #24—250 shares,	
Valued at.....	125.00
Tum-a-Lum Lumber Company 4% Preferred Stock (100 par)	
50 shares in Certificate #18	
Valued at.....	4,000.00
Consolidated Securities Company Common Stock (non par) 2½ shares in Certificate #116	
Valued at.....	62.50
Walla Walla Grain Growers 7½ shares	
P. V. \$30.00 per share,	
Valued at.....	7.50
Consolidated Securities Company Participation Certificates 40% remaining unpaid on Certificate Face \$1236.07, 40% remaining unpaid on Certificate Face \$12,891.40,	
Total valuation.....	2,542.95
Mortgage Loans:	
Friederich and Mamie Schmidt,	
Face originally \$2500.00,	
dated 7/15/25 due 7/15/35, interest 6%	
Valued at.....\$	600.00
Oliver T. Cornwell, et al,	
Face \$10,500.00, Dated 12/1/33 due 12/1/38,	
interest 6% annually, Valued at.....\$	10,500.00
Jacky & Fiedler, Inc.	
Face \$5500.00, dated 6/12/35 due 6/12/40,	
interest 7% semi-annually, Valued at.....\$	5,500.00

Notes:

Milton Box Company,	
One note \$4000.00, dated 5/9/34 due 11/9/34,	
Int. 8% Valued at.....\$	4,000.00
C. H. & C. B. Harris note,	
Face \$1500.00, dated 5/1/33 due 5/1/42	
Interest 5% Valued at.....\$	1,500.00

Exhibit "K"—(Continued.)

Elizabeth Bellingham

Face \$1000.00, dated 2/14/20 due 2/14/21

Int. 6% on which substantial amounts of principal and interest have been paid,

Valued at.....\$ 190.00

Additional Stock:

Northwest Toll Bridge Co. Capital Stock
(non par) 10 shares in Certificate No. 238.Wauna Toll Bridge Co. Preferred Stock
(100 par) 53 shares in Certificate No. 68.

Wauna Toll Bridge Co. Common Stock (non par)

Certificate No. 103—50 shares

No. 356— 3 shares

23 shares in

Certificate No. 351

Total..... 76 shares

making a grand total of the agreed valuation of
personal property in the sum of.....\$ 39,339.35

4. That pursuant to the provisions of the afore-said referred to Stipulation, bearing date the 7th day of April, 1938, there be and there hereby is distributed unto the Baker-Boyer National Bank, of Walla Walla, Washington, in trust, nevertheless, for each and every of the uses and purposes set forth in the Last Will and Testament and Codicil thereto of decedent in the order therein set forth, reference in respect thereto being hereto made and to constitute a part hereof as much so as if set forth herein verbatim, in its own separate right as such Trustee, the following described real estate situated in the County of Walla Walla, State of Washington, to-wit:

Exhibit "K"—(Continued.)

The Northwest Quarter of the Northeast Quarter, the North Half of the Northwest Quarter and the Southwest Quarter of the Northwest Quarter of Section Two (2), the North Half of Section Three (3), the East Half and the Northwest Quarter of Section Nine (9), the North Half of Section Ten (10), and Section Eleven (11), all in Township Eleven (11), North of Range Thirty-five (35) East of Willamette Meridian, containing 1925.04 acres,

And in addition thereto the Northeast Quarter of Section Sixteen (16) in the aforesaid Township and Range held under lease from the State of Washington, and known as the State School Land,

at the agreed valuation of.....\$ 76,652.00

Also: The South half of the Southwest quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$) of Section One (1) in Township Six (6) North, of Range Thirty-five (35) East of the Willamette Meridian,

Excepting therefrom the right of way of State Road No. 3 (Inland Empire Highway) along the North side of said premises and County Road.

Containing 77.60 acres, more or less.

Also: The Southwest quarter of the Southeast quarter of Section One (1) in Township Six (6) North, of Range Thirty-five (35) East of the Willamette Meridian.

Excepting therefrom the right of way of State Road No. 3 (Inland Empire Highway) along the North side of said premises.

Containing 39.40 acres, more or less.

Also: The Southeast quarter of the Southeast quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Two (2) in Township Six (6) North, of Range Thirty-five (35) East of the Willamette Meridian,

Excepting therefrom the right of way of State Road No. 3 (Inland Empire Highway) along the North side of said premises.

Containing 39.10 acres, more or less.

Exhibit "K"—(Continued.)

Also: The West half of the Northwest quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Twelve (12) in Township Six (6) North, of Range Thirty-five (35) East of the Willamette Meridian. Excepting County road along West side.

Containing 78.20 acres, more or less,
 at the total agreed valuation of.....\$ 16,859.16
 making a grand total of agreed valuation of all the
 real estate hereinbefore described in the sum of.....\$ 93,610.16

Also: Beginning at a point in the Southerly line of Birch Street in the City of Walla Walla, Washington, which point is 140.65 feet Easterly, measured along said Southerly line of Birch Street from the point of its intersection with the Easterly line of Fourth Avenue South (formerly Fourth Street) in said City; thence South 60° 10' West, along said Southerly line of Birch Street, a distance of 82.65 feet to a point in a line drawn parallel to and distant 58.00 feet Easterly, measured at right angles, from said Easterly line of Fourth Avenue South; thence South 29° 50' East, along said parallel line, a distance of 140.47 feet; thence North 60° 10' East 69.57 feet; thence South 26° 33' East 20.00 feet; thence North 60° 10' East 12.00 feet; thence North 26° 33' West 20.00 feet; thence Northwesterly in a straight line 140.50 feet, more or less, to the point of beginning.

Together with an Agreement in writing of date March 18, 1938, being the only Agreement in writing in respect thereto to sell and convey said real estate to Guy Nelson and Hazel L. Nelson, his wife, including all the personal property in said Agreement described on which there is remaining unpaid on the agreed purchase price therefor the sum of \$3200.00, subject to the terms and conditions in said Agreement set forth,

at the agreed valuation of.....\$ 3,200.00

And that there likewise be and there hereby is distributed unto the Baker-Boyer National Bank,

Exhibit "K"—(Continued.)

of Walla Walla, Washington, in its capacity as Trustee of the estate of decedent aforesaid, in its own separate right, the following described personal property, to-wit:

Bonds:

Federal Farm Mortgage Corporation 3% of 44/49 Registered \$1300 P. V. Bond #4918J 1 at \$1000. #6806F, #6807H, #6808J 3 at \$100, at the agreed valuation of.....	\$ 1,316.25
Walla Walla Funding Water Extension 4½% of 7/1/54 \$10,000 P. V. Bonds #371 to #380, inclusive, 10 at \$1000. at the agreed valuation of.....	\$ 10,400.00
Gardena Farms District #13 Walla Walla Co., 6% P. V. 5500 Series M. Bond #53 due 7/1/44 1 at \$500. Series N Bond #56, 57, 59, 60, 61, 62, 63, 64, due 7/1/45 8 at \$500. Series O Bond 65, 70 due 7/1/46 2 at \$500. at the agreed valuation of.....	\$ 5,500.00
Walla Walla Canning Company First Mortgage Leasehold 6% of 5/1/46 \$2000.00 P. V. Bonds 6 and 7 at \$1000.00, at the agreed valuation of.....	\$ 2,000.00
Northwest Toll Bridge Company 5% Debenture of 1/1/46 \$600.00 P.V. Bond #DC338 at \$600., at the agreed valuation of.....	\$ 180.00

Participation Certificate:

National Bondholders Corporation Participation Certificate Mortgage, Guarantee, Series A-1 No. MGA #700 to 709, 10 at \$1000. Face Value \$10,000. Paid on principal 41% at the agreed valuation of.....	\$ 2,500.00
National Bondholders Corporation Participation Certificate, Central Funding Series B CFB 531, 2442, 2443, 3 at \$1000. Face \$3000. Paid on principal 45%, at the agreed valuation of.....	\$ 780.00

Exhibit "K"—(Continued.)

National Bondholders Corporation Participation Certificate Central Funding Series C CFC 1855 to 1862, inclusive, 8 at \$1000. Face \$8000. Paid on Principal 45%, at the agreed valuation of.....	\$ 2,080.00
National Bondholders Corporation Participation Certificate Central Funding Series D CFD 1960, 1961 2 at \$1000. Face \$2000. Paid on Principal 45%, at the agreed valuation of.....	\$ 520.00
National Bondholders Corporation Participation Certificate Mortgage Bond Series E MBE 58 1 at \$500.00, Face, MBE522 to 524, inclusive, MBE 582, 730, 731, 969, MBE 1063, 1419, 1435, 1436, 11 at \$1000. Face \$11,500. Paid on Principal 46%, at the agreed valuation of.....	\$ 2,530.00
National Bondholders Corporation Participation Certificate, Southern Securities Series A SSNU4 1 at \$500. Face \$500. Paid on Principal 55%, at the agreed valuation of.....	\$ 85.00
National Bondholders Corporation Participation Certificate Investors Mortgage Series D IMD 51, 52, 2 at \$1000 Face \$2000. Paid on Principal 41% at the agreed valuation of.....	\$ 340.00
National Bondholders Corporation Participation Certificate, Union Mortgage Series G UMG 419, 420, 421 3 at \$1000 Face—\$3000. Paid on Principal 64% at the agreed valuation of.....	\$ 270.00
National Bondholders Corporation Participation Certificate, Central Funding Series A CFA 104, 241, 2 at \$500. Face CFA 1569 1 at \$1000.—\$2000. Paid on principal 45% at the agreed valuation of.....	\$ 520.00
Walla Walla Canning Company Capital Stock (non par) Certificate #435—5 shares at the agreed valuation of.....	\$ 375.00

Exhibit "K"—(Continued.)

Walla Walla Canning Company Preferred Stock (100 par) 5 shares in Certificate #151 at the agreed valuation of.....	\$	500.00
Milton Box Company Capital Stock (100 par) 12½ shares in Certificate #138, at the agreed valuation of.....	\$	1,250.00
Walla Walla Farmers Exchange Capital Stock \$10.00 par)		
Certificate # 18—100 shares		
" #281—125 shares		
Total..... 225 shares		
at the agreed valuation of.....	\$	225.00
Walla Walla Farmers Agency Capital Stock (\$100.00 par)		
Certificate #115— 2 shares		
" #116— 2 shares		
" #129— 4 shares		
" #139—16 shares		
Total..... 24 shares		
at the agreed valuation of.....	\$	960.00
Northwest Toll Bridge Co. Capital Stock (non par) 10 shares in Certificate No. 238.		
Wauna Toll Bridge Co. Preferred Stock (100 par) 53 shares in Certificate No. 68		
Wauna Toll Bridge Co. Common Stock (non par) 77 shares in Certificate No. 351.		
Gas Ice Corporation Common stock (non par) 325 shares in Certificate #171, at the agreed valuation of.....	\$	325.00
Klickitat Mineral Springs Inc. Capital Stock (non par) Certificate #56 250 shares, at the agreed valuation of.....	\$	125.00
Tum-a-Lum Lumber Company 4% Preferred Stock (100 par) 50 shares in Certificate #18, at the agreed valuation of.....	\$	4,000.00
Consolidated Securities Company Common Stock (non par) 2½ shares in Certificate #116, at the agreed valuation of.....	\$	62.50

Exhibit "K"—(Continued.)

Walla Walla Grain Growers 7½ shares, P. V. \$30.00, at the agreed valuation of.....	\$	7.50
Consolidated Securities Company Partecipation Certificate, 40% remaining unpaid on Certifi- cate Face \$1236.07, 40% remaining unpaid on Certificate Face \$12,891.40, at the agreed valuation of.....	\$	2,542.95
Mortgage Loans:		
Marvin Evans Face \$16,000.00, Interest 5% Paid on principal \$6000.00, Dated 11/2/32 due 12/15/38 at the agreed valuation of.....	\$	10,000.00
Cleve and Lucy B. Prather, Face \$750.00, Interest 6% dated 10/1/30 due 10/1/32 at the agreed valuation of.....		774.38
Notes:		
Henry H. and Flora Moore Bennett, Face \$1000.00, Interest 7% Paid on principal \$2.50 Dated 10/9/37 due 10/9/38 at the agreed valuation of.....		997.50
J. T. Crawford, Face \$10,000.00, Interest 6% Dated 11/14/32 due 11/14/37 at the agreed valuation of.....	\$	10,000.00
Milton Box Company, one note for \$4000.00 Dated 5/9/34 due 11/9/34 Interest 8% at the agreed valuation of.....	\$	4,000.00
C. H. and C. B. Harris Face \$2250.00, Interest 5% Dated 5/1/33 due 5/1/41 at the agreed valuation of.....	\$	2,250.00
W. W. Harvey, Face \$12,000.00, Interest 5% Dated 5/24/37 taken in lieu of lost or mis- placed promissory note at the agreed valuation of.....	\$	2,222.16
Miscellaneous:		
½ interest in head of cattle on ranch April 7, 1938 rented to E. E. Reeve, at the agreed valuation of.....	\$	125.00
½ interest in hog on ranch April 7, 1938 rented to E. E. Reeve, at the agreed valuation of.....	\$	4.00

Exhibit "K"—(Continued.)

The \$20,000.00 promissory noted dated November 20, 1937, made and executed by Glen A. Smith and Clara T. Smith, his wife, bearing interest at the rate of 5% per annum, payable annually, due November 20, 1947, and secured by mortgage of even date therewith on real estate therein described, and which said mortgage was filed for record November 30, 1937, and recorded in Book 152 of Mortgages at page 272 in the office of the County Auditor of said Walla Walla County,

at the agreed valuation of.....\$ 20,000.00

One promissory note bearing Serial No. 18, of date September 23, 1937, in the principal sum of \$2500.00, made and executed by A. J. Naimy and Josephine Naimy, his wife, and Harry Winget and Laura Winget, his wife, due October 1, 1945, bearing interest at the rate of six per cent per annum, interest payable semi-annually, and secured by mortgage of even date therewith on real estate therein described, and recorded September 30, 1937, in Book 152 of Mortgages at page 148 in the office of the County Auditor of said Walla Walla County,

at the agreed valuation of.....\$ 2,500.00

State Line Telephone Co. Capital Stock (100 par) Certificate #72— $\frac{1}{4}$ share, making a grand total of agreed valuation of personal property, including the remaining unpaid balance of \$3200.00, pursuant to the terms and conditions of the aforesaid Agreement in writing of date March 18, 1938 to sell certain real estate above described to Guy Nelson and Hazel L. Nelson, his wife, in the sum of.....\$ 95,467.24

5. That pursuant to the provisions of the aforesaid referred to Stipulation bearing date the 7th day of April, 1938, and pursuant to the provisions of Paragraph "VI" of the Last Will and Testa-

Exhibit "K"—(Continued.)

ment of decedent, there be and there hereby is distributed unto the said Carrie Welch in her own separate right an undivided one-half interest in and to the following described lands and premises, situated in the County of Walla Walla, State of Washington, to-wit:

Beginning at a point on the East line of Section 33, in Township 7 North, of Range 34 East of the Willamette Meridian, which is 10 chains North of the quarter corner on the East side of said Section 33; thence North on the East line of said Section 33 and the East line of Section 28, said Township and Range, to a point in the East line of said Section 28, which is 50 feet South of the center line of the main track of the Walla Walla and Columbia River Railroad (Oregon Railroad and Navigation Company) measured on a line drawn at right angles to said center line; thence Westerly on a line drawn parallel to and distant 50 feet Southerly from said center line of said Railroad, to a point in the North and South center line of said Section 28; thence South and on said center line of said Section 28 and the center line of Section 33 aforesaid, to a point in said center line of Section 33, which is 10 chains North of the center point of said Section 33; thence East 39.32 chains to the point of beginning.

Also: Beginning at a point in the North line of the Louis Dauneey Donation Claim, which is 60 feet West of the point of intersection of said North line with the North and South center line of Section 28, Tp. 7 N.R. 34, E. W. M. thence West 4.50 chains;

Exhibit "K"—(Continued.)

thence South 14.95 chains; thence North $72^{\circ} 20'$ West 6.84 chains; thence South 7.42 chains to the Walla Walla River; thence following the meanderings of said River in a general Easterly direction, and along its North bank as follows: N. $56^{\circ} 29'$ E. 2.07 chains; N. $83^{\circ} 24'$ E. 2.49 chains; thence $36^{\circ} 54'$ E. 1.50 chains; thence S. $10^{\circ} 06'$ E. 4.32 chains; thence S. $76^{\circ} 12'$ E. 1.19 chains; thence N. $20^{\circ} 23'$ E. 7.40 chains; thence N. $75^{\circ} 13'$ E. to a point on the North bank of said River which is 60 feet West of said North and South center line of Section 28, measured on a line at right angles thereto; thence North 18.35 chains to the point of beginning.

Together with all easements, rights of way, water and water rights thereunto belonging or appurtenant to the lands and premises above described.

Said Louis Dauneey Donation Claim being Claim No. 38, according to the Official Plat thereof in the office of the Surveyor General of the United States and being parts of Sections 28, 29, 32 and 33 in Township seven (7) North, of Range thirty-four (34) East of the Willamette Meridian.

Excepting therefrom the right of way of the Oregon-Washington Railroad and Navigation Company, formerly Walla Walla and Columbia River Railroad Company, and a life estate in the remaining undivided one-half thereof; and that there be and there hereby is distributed unto Fred B. Welch, son of said deceased, said remaining undivided one-half thereof, subject to the life estate of his mother, the said Carrie Welch.

Exhibit "K"—(Continued.)

6. That pursuant to the provisions of the aforesaid referred to Stipulation bearing date the 7th day of April, 1938, and pursuant to the provisions of Paragraph "V" of decedent's Last Will and Testament as limited by the provisions of said Stipulation, all the rents, issues and profits of and from all of the property of the estate of the said George T. Welch, deceased, and the said Carrie Welch, his surviving spouse, accruing since the death of the said George T. Welch and up to the time of the entry of this Decree, less payments thereof heretofore made to said Carrie Welch and also less general property taxes and other expenses properly chargeable and paid out of said income, be and the same hereby are distributed to the said Carrie Welch.

7. That pursuant to the provisions of the aforesaid referred to Stipulation bearing date the 7th day of April, 1938, and pursuant to the provisions of Paragraph "V" of decedent's Last Will and Testament as limited by the provisions of said Stipulation, all the rents, issues and profits of and from all cash and other property, real and personal, of the estate of the said George T. Welch, deceased, distributed pursuant to said Stipulation to said Baker-Boyce National Bank, of Walla Walla, Washington, as Trustee aforesaid, after deducting therefrom all charges and expenses properly payable therefrom, shall be by said Trustee and said Trustee is hereby directed to pay same over to said Carrie Welch during the remainder of her natural

Exhibit "K"—(Continued.)

life, said payments to be made semi-annually or at shorter intervals when convenient and reasonable; it being understood that the compensation to be paid said Bank as such Trustee for its services herein shall be one-half of one per cent per annum of the value of said trust estate for all services incidental to the collection and distribution of such rents, issues and profits during the remainder of her natural life.

8. That there be and there hereby is distributed unto the said Carrie Welch in her own separate right an undivided one-half interest in and to the following described personal property shown in the original Inventory and Appraisalment of said estate, to-wit:

Transamerica Corporation Capital Stock

Certificates

Certificate #SF/E	71827—100 shares
“	71828—100 shares
“	71829—100 shares
“	71830—100 shares
#SF/D	76189— 10 shares

Total.....410 shares

Bancamerica-Blair Corporation Capital Stock Certificate SFF79053 8 shares,

And in addition thereto Bank of America Capital Stock Certificate #A1972 41 shares (Received as distribution on Transamerica Stock),

Exhibit "K"—(Continued.)

and that there be and there hereby is distributed unto the Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Trustee of the estate of decedent as aforesaid, in its own right, the remaining undivided one-half interest therein and thereto, subject to the payment by said Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Trustee of the estate of decedent as aforesaid, in its own right, the remaining undivided one-half interest therein and thereto, subject to the payment by said Baker-Boyer National Bank, of Walla Walla, Washington, as Trustee aforesaid, of all the net rents, issues and profits therefrom, or of the proceeds of the sale or other disposition made thereof, to said Carrie Welch during the remainder of her natural life.

9. That there be and there hereby is distributed unto the said Carrie Welch out of the residue of the community estate of the said George T. Welch, deceased, and herself as his surviving spouse, in cash, the sum of \$34,380.96, and that there be and there hereby is distributed unto the said Baker-Boyer National Bank, of Walla Walla, Washington, in its capacity as Trustee herein, the remaining portion of said cash in the sum of \$19,653.79, pursuant to the terms of Subdivision (5) of said Stipulation.

10. That should there be any property of the corpus of said community estate, real or personal, other than the community property hereinbefore distributed, the same is hereby distributed in equal shares to said Carrie Welch and to the said Baker-

Exhibit "K"—(Continued.)

Boyer National Bank, of Walla Walla, Washington, as Trustee aforesaid.

11. That the aforesaid named Carrie Welch, Fred B. Welch and George B. Allen are the sole and only heirs at law of decedent and three of the beneficiaries named and provided for in decedent's said Last Will and Testament, and that in addition to them the aforesaid named Tena Haas, formerly Tena Zuest, Mrs. Clara Pitt, Board of Conference Claimants, Inc. of the Pacific Northwest Annual Conference, Methodist Episcopal Church, having its offices in Seattle, Washington, and the Baker-Boyer National Bank, of Walla Walla, Washington, in trust for the uses and purposes set forth in said Last Will and Testament and Codicil thereto, are the remaining beneficiaries named and provided for in said Last Will and Testament of decedent, and that the aforesaid named Carrie Welch, Fred B. Welch, George B. Allen, Board of Conference Claimants, Inc. of the Pacific Northwest Annual Conference, Methodist Episcopal Church, having its offices in Seattle, Washington, and the Baker-Boyer National Bank, of Walla Walla, Washington, in trust for the uses and purposes set forth in said Last Will and Testament and Codicil thereto of decedent, are the legatees and devisees or persons entitled to have the property of decedent distributed to them in the proportions and in the manner hereinbefore in this Decree set forth, and that all debts have been paid.

12. That the said Baker-Boyer National Bank, of Walla Walla, Washington, continue in its capa-

Exhibit "K"—(Continued.)

city as Executor herein until the remainder, if any, of the Federal Estate and State Inheritance Taxes are finally determined and paid herein, and due receipts issued therefor.

Done and dated in open court this 9th day of May, 1938.

(Signed) TIMOTHY A. PAUL
 Judge

Presented by:

MARVIN EVANS
Attorney for Estate.

[Endorsed]: Filed May 9, 1938.

EXHIBIT "L"

121 Old Capitol Building
Telephone 1440

Address All Communications
To The Supervisor
State of Washington
Inheritance Tax and Escheat Division
Olympia
March 19, 1938

Re: Estate of George T. Welch, Deceased.
No. 26994 Walla Walla. 4-15-37.

Marvin Evans, Attorney,
601 Baker Building,
Walla Walla, Washington.

Dear Sir:

We acknowledge receipt of your letter of March

16th enclosing inheritance tax report in the above entitled estate, copy of court order for widow's allowance, copy of federal estate tax return from 706 required by statute together with check payable to the State Treasurer in the sum of \$685.51 which amount we have deposited with the State Treasurer as a partial payment of the inheritance tax in this estate, pending receipt of a copy of the federal audit of the estate tax return form 706, showing all changes made and final determination of the Federal Estate Tax required by statute. Please furnish us with a copy of this audit at your earliest convenience.

In your inheritance tax report submitted, you have claimed as exempt the remainder of certain trusts after deducting the life estate, and also the residue of the estate placed in trust as provided under section IX of the last will and testament. Gifts or transfers of property made under section 11218-A, in order to be exempt, must be limited for use within the State of Washington; it therefore appears that these transfers are subject to state inheritance taxes under the statute. See recent Supreme Court decision re: Estate of George A. Colman.

We suggest that you have the executor send us remittance payable to the State Treasurer on the above mentioned bequests passing to Class "C" beneficiaries. If the tax is not paid within the fifteen month period provided by statute, 8% interest will be added thereto, from date of death to date of payment. On receipt of a copy of the federal audit

above referred to, we will then notify you as to any balance of inheritance tax remaining unpaid.

Yours very truly,

WILLIAM H. PEMBERTON,

Supervisor,

By H. H. MARTIN

EXHIBIT "N"

In the Superior Court of the State of Washington
In and for the County of Walla Walla

In the matter of the Estate

of

GEORGE T. WELCH, Deceased.

BAKER-BOYER NATIONAL BANK, a corpora-
tion, as Executor and Trustee,

Petitioner,

vs.

STATE OF WASHINGTON, Inheritance Tax and
Escheat Division,

Respondent.

No.....

PETITION

Dated March 22, 1940.

Comes now Baker-Boyer National Bank, a corporation, of Walla Walla, Washington, petitioner herein, and respectfully shows:

I.

That petitioner is now and at all times during the probating of the above named estate has been the duly appointed, qualified and acting executor of said estate; that your petitioner was nominated in the Will of decedent also as trustee to hold in trust the "rest, residue and remainder" of the estate, subject to the life estate of Carrie Welch, widow of decedent, for certain charitable purposes and by stipulation with the widow, and pursuant to decree of distribution entered herein, said bank as trustee is now holding in trust the decedent's community one-half of the net estate, less specific bequests already paid.

II.

That all of the property coming into your petitioner's hands as trustee was duly appraised by three appraisers appointed by the court, one of whom was nominated by the Inheritance Tax and Escheat Division of the State Tax Commission; that the amount of said appraisal was \$450,107.95; that after deducting debts and costs, the amount of the net estate was \$440,386.35, of which decedent's community one-half was \$220,193.18.

III.

That your petitioner filed an inheritance tax report showing tax due of \$685.51, which has been paid; that said tax was determined in the following manner:

Class "A" beneficiaries:

Carrie Welch, widow, life estate.....	\$18,463.62
Fred B. Welch, son, life estate.....	17,547.22
George B. Allen, grandson, life estate	10,764.58

Total to Class "A" beneficiaries..	\$46,775.42
Less Class "A" exemption.....	10,000.00

Balance	\$36,775.42	
Taxable at 1%.....	15,000.00	Tax \$ 150.00

Taxable at 2%.....	\$21,775.42	" 435.51
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Class "C" Beneficiaries:

Tona Haas (Zuest) no relationship	500.00	50.00
Clara Pitt no relationship.....	500.00	50.00

Total Tax		\$ 685.51
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That the inheritance tax report as filed with the Inheritance Tax and Escheat Division showed that the remainder of the estate went to "charity" and other tax exempt purposes.

IV.

That decedent's will provides in Paragraph V thereof that, after payment of the two bequests each of \$500.00:

"I do hereby give, devise and bequeath unto my said wife, Carrie Welch, for and during her lifetime, should she survive me, all the rest, residue and remainder of my estate, both real and personal, including the rents, issues and profits therefrom, and whatsoever the same may consist and wheresoever situate, with the distinct understanding that no limitation is placed on my wife in any expenditures which she may make for any purpose, or any accounting be

made thereof, with the then remainder over her death unto my trustee, hereinafter named, in trust, nevertheless, for the uses and purposes hereinafter mentioned, and more particularly set forth, save and except my community undivided one-half interest in certain lands hereinafter described, which I hereinafter give and devise unto my son, Fred B. Welch, freed from any trust provision of my will * * *.”

And further provides at the beginning of each of paragraphs VI, VII and VIII thereof:

“Subject to the life estate hereinbefore given, devised and bequeath unto my said wife, Carrie Welch, should she survive me, as aforesaid, * * *”

V.

That all of the aforesaid estate was jointly acquired by the resourcefulness, energy and sound business practices of the said George T. Welch and his wife, Carrie Welch; upon their marriage that they pooled and added together their possessions and the said estate grew through their combined efforts; that during all the marital years, the husband managed the estate; that the widow has never claimed ownership of more than her community half, or claimed any interest in the other half of the estate, except as a devisee of a life estate under the will of decedent; that before the entry of decree of distribution herein, a stipulation was entered into between the widow and your petitioner as trustee whereby the estate was to be partitioned and one-half set over to Carrie Welch, the widow, as her sole and separate

property, and the other half to the petitioner, as trustee under the will; that said partition and stipulation was approved by the court, and the estate distributed accordingly; that the executor was not discharged, the estate being kept open for the express purpose, among others of settling the State Inheritance Tax, although petitioner is now in possession of said estate under said Decree, as Trustee and is executing its said trust.

VI.

That after the payment of the inheritance tax as stated in Paragraph III, your petitioner received from the Inheritance Tax and Escheat Division a letter, a copy of which is attached, marked Exhibit "A" and made a part of this petition for all purposes; that your executor alleges that the position taken by respondent, Inheritance Tax and Escheat Division in said letter wherein it is contended that the transfer of the remainder of the trust and the residue of the estate in order to be exempt must be limited for use in the State of Washington is erroneous for the reason that the charitable trust passes to the legatee in Oregon, who is entitled to the same exemption as would apply if the said bequests were limited for use in the State of Washington; that the inheritance tax if assessed in accordance with said letter will amount to \$34,883.13.

VII.

That the said Inheritance Tax Division now proposes to increase the total valuation of the total community estate from \$451,107.95 to \$454,988.99.

VIII.

That your petitioner as trustee pays to Carrie Welch, the widow of decedent, all of the income from the trust funds and properties, but that the will has never been expressly construed to determine whether Carrie Welch has power under the will to use and expend any part of the corpus of the estate or the duties of the Trustee in such event; or the amount of the estate vested in the remaindermen upon the death of the testator, or the interest chargeable with any inheritance tax due and payable to the State of Washington; that until the will has been construed with reference to those matters, your petitioner, should it pay the additional tax now demanded, would have no assurance that further tax might not thereafter be demanded; that the inheritance tax is a lien until paid on all the decedent's community half of the estate; that until a construction of the will with reference to the matters above mentioned, and until final determination of the inheritance tax, your petitioner, as such executor and trustee will be hampered in handling the estate, particularly in making sales; that if the said Carrie T. Welch under the terms of said will takes either the fee title to said estate or the right to invade the corpus of the estate, the amounts left by decedent for education and charitable purposes and to the son and grandson of decedent are uncertain.

Wherefore your petitioner prays the court to fix a time and place for the hearing of this petition; and further prays the court to cite the Supervisor of the State Inheritance Tax Division to appear at

such hearing; and further prays the court at such hearing to construe the will of decedent and particularly the portion thereof quoted in Paragraph IV of this petition, as to the nature of the estate of decedent's widow, and as to the scope of her power to expend the corpus; and further prays the court at said hearing to determine the value of the estate of decedent for purposes of computing the inheritance tax; and further prays the court to determine whether the charitable and educational trusts and bequests for which the will makes provision are tax exempt purposes; and further prays the court to determine the amount of inheritance tax due from the estate to the State of Washington.

BAKER-BOYER NATIONAL
BANK

By
Its
Petitioner.

State of Washington,
County of Walla Walla—ss.

N. A. Davis, being first duly sworn, on oath deposes and says: That he is the Vice President of the Baker-Boyer National Bank, a corporation, petitioner above named, and is authorized to and does hereby make verification of said petition for and on behalf of petitioner; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

.....

Subscribed and sworn to before me this 22 day of
March, 1940.

Notary Public in and for the State of Washington,
residing at Walla Walla.

State of Washington
Inheritance Tax and Escheat Division
Olympia

March 19, 1938

Re: Estate of George T. Welch, Deceased
No. 26994 Walla Walla 4-15-37

Marvin Evans, Attorney
601 Baker Bldg.,
Walla Walla, Washington.

Dear Sir:

We acknowledge receipt of your letter of March 16th enclosing inheritance tax report in the above entitled estate, copy of court order for widow's allowance, copy of federal estate tax return form 706 required by statute together with check payable to the State Treasurer in the sum of \$685.51, which amount we have deposited with the State Treasurer as a partial payment of the inheritance tax in this estate, pending receipt of a copy of the federal audit of the estate tax return form 706, showing all changes made and final determination of the Federal Estate Tax required by statute. Please furnish us with a copy of this audit at your earliest convenience.

In your inheritance tax report submitted, you

have claimed as exempt the remainder of certain trusts after deducting the life estate, and also the residue of the estate placed in trust as provided under section IX of the last will and testament. Gifts or transfers of property made under section 11218-A, in order to be exempt, must be limited for use within the State of Washington; it therefore appears that these transfers are subject to state inheritance taxes under the statute. See recent Supreme Court decision re: Estate of George A. Colman.

We suggest you have the executor send us remittance payable to the State Treasurer on the above mentioned bequests passing to Class "C" beneficiaries. If the tax is not paid within the fifteen month period provided by statute, 8% interest will be added thereto, from date of death to date of payment. On receipt of a copy of the federal audit above referred to, we will then notify you as to any balance of inheritance tax remaining unpaid.

Yours very truly,

WILLIAM H. PEMBERTON
Supervisor.

Mr. Winter: I might say, in connection with the stipulation, Your Honor, there will be a duplication in exhibits of the stipulation and those attached to the complaint but we thought Your Honor wouldn't have to take the complaint—it might be more convenient if we made the stipulation in that form.

The Court: You Gentlemen let me read this stipulation, first; I will understand it better.

Mr. Poe: Certainly.

The Court: I would suggest that this stipulation be joined together a little bit more permanently and I would suggest a cover be placed on it.

(Reads stipulation.)

You may proceed.

Mr. Poe: Your Honor, there is another attorney here from Walla Walla, Mr. Marvin Evans, who may be a witness in this case.

Mr. Winter: We have no objection if he acts as a witness, to his taking any part in the proceedings.

The Court: If he is associated as Counsel in the case, you would like for him to be privileged to [4] argue the case and also be a witness?

Mr. Poe: Perhaps.

Mr. Winter: We have no objection.

The Court: Mr. Evans is recognized as Associate Counsel in the case and he is privileged to testify in the case without preventing him from arguing.

Mr. Sherwood: Mr. Evans is admitted to practice in the Eastern District, not Western District. I would like to move his admission, for the purpose of this case. He has never been formally admitted in this District.

The Court: Is there any reason he should not be admitted, for the purpose of this case?

(No reply.)

The Court: He is admitted for the purpose of this case, in this District.

Mr. Poe: Your Honor, would you like to hear a statement in regard to the plaintiff's position?

The Court: I think it might be appropriate.

Mr. Poe: I knew you had the stipulation and were familiar with the complaint.

Briefly, this case involves the interpretation of the will and probably hinges on that particular paragraph.

(Makes opening statement on behalf of the plaintiff herein.)

Mr. Winter: I have just one word.

We believe this case involves, principally, one issue and that is, what amount, if any, passed to [5] charity under the terms of this Will.

(Makes opening statement on behalf of the defendants herein.)

The Court: Call your first witness.

Mr. Sherwood: I will call Mr. Davis.

N. A. DAVIS,

called as a witness on behalf of the plaintiff herein,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Sherwood:

Q. State your name, please?

A. N. A. Davis.

Q. Mr. Davis, what official connection, if any, do you have with the Baker-Boyer National Bank, of Walla Walla, Washington?

A. I am Vice President and Manager of the Trust Department.

Q. How long have you been officially connected with that institution? A. Since 1917.

Q. In what capacities?

A. Well, I began as Assistant Cashier, later was Cashier and later, Vice President and when the Trust Department was established, I was named as Manager of the Trust Department and I am Manager of that Department.

Q. You are now and have been, some years, Manager of the Trust Department? A. Yes.

Q. What duties do you have as Manager of the Trust Department of that institution? [6]

A. The usual duties performed by a Trust Officer.

Q. And you are acting as Trustee of the Estate of the late George T. Welsh, deceased?

A. Yes.

Q. Mr. Davis, how long had you known Mr. George T. Welsh prior to 1930?

(Testimony of N. A. Davis.)

A. Well, I have known him ever since 1917.

Q. Has that been an intimate acquaintance?

A. Quite so.

Q. Did he do business with your Bank during those years? A. Yes, a long time before.

Q. He maintained accounts there prior to 1930, with the Bank? A. Yes, he did.

Q. And what conversations, if any, did you have with Mr. Welsh respecting the execution of his last Will and Testament, if any?

Mr. Winter: I object to that as irrelevant and immaterial and it may be an attempt to vary the terms of the Will. The Court must construe the Will from its four corners. This is conversation with a deceased person.

Mr. Sherwood: We are offering it as extrinsic evidence of not what should be the contents of the Will or to vary its terms but merely to show the setting under which the Will was drafted, under the Decisions of our State Supreme Court, showing that not to vary the terms but the setting of the situation surrounding the Testator, so the Court can place itself in the position of the Testator, in construing the [7] Will. I have in mind the particular decisions—particularly *In Re Doepke Estate*, 182 Washington, 556.

Mr. Winter: There is a lot of difference, in asking for a conversation with a deceased person.

Mr. Sherwood: While we don't admit that there is any great degree of ambiguity about the Will, that term is a relative term in any Will case, par-

(Testimony of N. A. Davis.)

ticularly in a complicated Will of this kind, complicated in its terms and these conversations leading up to the execution of the Will, we believe would throw some light upon the intentions of the Testator, to be gathered from the language of the Will, not for the purpose of varying the terms of the Will, but explaining it.

Mr. Winter: Clearly, from Counsel's own statement, I can see no other explanation than trying to vary the terms of the Will.

The Court: I will reserve ruling on this.

Counsel may proceed with his examination of the witness and it may be considered as an offer of proof, and it is understood all of this goes in over the objection of the Attorney for the Government and that Counsel for the defendants may cross-examine without waiving their right to object.

Mr. Sherwood: That is agreeable, Your Honor.

Q. Mr. Davis, what conversations did you have immediately preceding the execution of this Will, if you had such conversations?

Mr. Winter: And who was present?

Q. Who was present, where they took place and stating the time as near as possible? [8]

A. I think the first conversation I had with Mr. Welsh—he came in to my Desk one day and said he thought of making his Will, or intended making his Will, and wanted to make some trusts for charitable purposes and that he was a little worried about whether he wanted to make the Bank trustee, a little concerned about whether we might get them mixed

(Testimony of N. A. Davis.)

up. He says "There will be about three or four different trusts in my Will. Could you keep that all straight?" I said "We surely could. We handle a good many trusts and each trust is carried absolutely on its own basis." I said "You might make twenty-five trusts, and each would be as separate as though made by twenty-five different men. Come around here and I will show you how we keep our books." So he stepped around where the Trust Register is, looked at it and said "That is all right. That is all right." That is about the conversation had at that time.

Q. That was about when, in relation to——?

A. (Interrupting) About a month before he executed the Will.

Q. He executed the Will about what time, do you recall that date? A. I think it was 1930.

Q. Did you have other conversations with him prior to the time you assumed the duties of Trustee under the Will?

A. Yes, he sent word for me, would I come down to the house.

Q. Did you go to the house?

A. I went to the house.

Q. About what time? [9]

A. Well, the Will was under consideration at that time.

Q. Did Mr. Evans accompany you?

A. Yes, Mr. Evans was down there at the same time.

(Testimony of N. A. Davis.)

Q. Mr. Evans had been the Attorney for the family, some years? A. So I understood.

Q. What conversation did you have at the house and who was present?

A. Mrs. Welsh was present and the reason, particularly, they wanted us at the house, Mrs. Welsh was rather an invalid, tied to the chair, she couldn't get around, and can't yet, so we went down to the house, he explaining about the terms they wanted to put in their Wills, what it would mean, so forth. We stayed there an hour or two that evening, chatted about the matter, explained details to them, explained how they would be handled.

Q. Did he have in mind at that time the specific amounts——?

A. (Interrupting) He didn't say.

Mr. Winter: He is now asking this witness what a deceased person had in his mind.

The Court: This is under the reservation of ruling, is considered an offer and it is not necessary for you to object.

Mr. Winter: Thank you, Your Honor.

Q. Mr. Davis, did he state anything with relation to the specific amounts he wanted to go into the specific trusts that he intended to put into his Will?

A. I don't think he did the first time I was down, but I think I was down again after Mr. Evans had drafted the Will and those items were read over and they wanted to [10] have them read and explained a bit.

(Testimony of N. A. Davis.)

Q. To what extent were you then familiar with the business and family affairs of Mr. and Mrs. Welsh?

A. Well, just the same extent we usually do with customers who are quite intimate with the Bank.

Q. Did you advise them about their investments?

A. No, I couldn't say I advised him; he often came to me and asked me what I thought about this, that or the other; I don't know whether you call that "advice" or not.

Q. Now, did Mr. Welsh discuss with you later, after the Will was executed by him in 1930, the change made by the codicil which was dated in 1931?

A. Yes, he did.

Q. What did he say with relation to his codicil before it was——?

The Court: (Interrupting)) So I will understand it, this conversation was when?

Q. When was that, Mr. Davis?

A. It was about the time the codicil was dated, about a year after the Will was drawn, something like that. The reason for that was that he had made a provision in the Will for the Walla Walla Valley General Hospital, I believe is the name, anyhow it was a hospital that had been built largely by subscription there and sort of a community affair and Mr. Welsh felt kindly towards it; later on, it didn't prosper financially and was sold to a religious organization as a hospital for their use and Mr. Welsh told us since it had gone out of the

(Testimony of N. A. Davis.)

community's management, he didn't care to remember it [11] in his Will.

Q. Now, do you know the condition of Mrs. Welsh's health then and at all times subsequent?

A. Well, I know generally, yes, she was——

Mr. Winter: (Interrupting) My objection still goes to this?

The Court: Yes, this is all under reservation of ruling until it is called to the Court's attention that the parties are proceeding on another phase.

A. Well, she was reputedly in rather poor health. She was about 88 years old, 87 or 88.

Q. That was at the time of the death of Mr. Welsh?

A. Yes, at the time of the death of Mr. Welsh.

Q. When did he die?

A. April 15, 1937; I believe he died in 1937, April 15th, I believe.

Q. And you have observed her, personally, through that period of time? A. Yes.

Q. Seen her, more or less, frequently?

A. Yes.

Q. And you have seen her up to the present time? A. Yes.

Q. What is her condition of health?

A. I haven't seen her for some months because she doesn't come out any, she has a representative who talks over her business for her; once in awhile, she talks over the 'phone but it is hard for her to

(Testimony of N. A. Davis.)

talk over the 'phone. She has never been able, as long as I have known her since we first talked about the Will, to walk [12] about the house without someone to help her along on crutches.

Q. Will you state the conversations with Mrs. Welsh at the time you were at the home respecting the husband's Will?

A. After the Will was probated?

Q. Before, when he was talking about drawing it?

A. Oh, she was there in the general conversation and she told me that they were anxious to make the Bank her Trustee because some of her friends had estates handled by the Bank and liked the way it was handled and they were going to make the Bank the Trustee under their Will.

Q. State anything with reference to the nature of the charities they intended to bequeath under their Wills?

A. Help poor people, largely, and boys to get an education, and young folks to get an education.

Q. After the death of Mr. Welsh, have you had any conversations with Mrs. Welsh respecting their trust, this trust?

A. Yes.

Q. When and where were these conversations had and who was present? Do you recall the first time you saw her after Mr. Welsh's death?

A. Well, I went down to the house after his funeral and she talked to me about missing him so much and so forth and about she—I don't know as the particular terms of the Will were ever mentioned at that time.

(Testimony of N. A. Davis.)

Q. Later on? A. Yes. [13]

Q. Just state the time and place and the full conversation, who was present?

A. Well, she often sent for me to come to the house, she wanted to talk to me a little bit about one thing and another, said she never had any experience in business, that she has "got to learn now", had me show her how to fix out checks, sign them, one thing and another and she said that part of the property belonged to her, she had helped make it and her property she wanted to arrange to handle, herself, but what belonged to "Papa"—she always expressed it "What belonged to 'Papa' ", she didn't expect to have anything to do with, that was for the Bank to look after.

Q. And did you ever, at any time, as Trust Officer of the Bank, Baker-Boyer National Bank, or the Baker-Boyer National Bank as Trustee through other agents, pay anything except the income from the Welsh Estate to Mrs. Welsh?

Mr. Winter: We will——

The Court: (Interrupting) This is still under reservation of ruling. I haven't been told this is under another phase.

Mr. Sherwood: I will offer that under another phase.

The Court: When you abandon your offer, I will allow Mr. Winter to cross-examine, as he may desire, without thereby waiving any rights he will have, his right to object to the offer being immaterial or

(Testimony of N. A. Davis.)

make such other objections as he wishes as though he had not cross-examined. You may proceed now, if you wish? [14]

Mr. Winter: With the cross-examination?

The Court: On the offer.

Cross Examination

By Mr. Winter:

Q. What business was Mr. Welsh in? What was Mr. Welsh's business? A. He was a farmer.

Q. Farmer?

A. But during later years of his life, he was retired, so far as active farming was concerned, he lived in town, but still rented his farms.

Q. He had considerable property holdings at that time? A. He did.

Q. You would consider him a fairly successful business man, would you? A. Yes.

Q. He was intelligent? A. Yes.

Q. So far as you knew, he had the use of his faculties almost up to the day he died, didn't he?

A. Oh, I think he did, Mr. Winter, at least until a very short time.

Q. Would you say he was an educated man or not?

A. Well, no—yes, in a way; he had attended Business College when he was a young man and he was very careful in making his accounts, in his books he went over, made his entries very carefully, unusually so for a farmer.

Q. And that was true of all his dealings?

(Testimony of N. A. Davis.)

A. I think so. [15]

Mr. Winter: That is all the cross-examination I think I have.

Direct Examination (Cont'd)

By Mr. Sherwood:

Q. Mr. Davis, can you, of your own knowledge, tell the Court whether Mrs. Carrie Welsh has received, out of this trust estate, either from you as Executor or as Trustee anything except the income from the one-half interest in the community estate set aside to you as Trustee?

Mr. Winter: I object to that as irrelevant, immaterial and we call Your Honor's attention to the case of Ithaca Trust Company versus United States where the Supreme Court said—it will not concern itself with what amount the charity actually received afterwards, whether it was used or not; the sole question and the law is well settled by a long line of cases, the only evidence which is admissible relative or material is what was the situation under the terms of the Will at the date of the decedent's death?

Mr. Sherwood: I offer to show the construction the parties, themselves, placed upon the instrument. The record shows from the stipulation and the exhibits annexed that Mrs. Carrie Welsh was at all times represented by her own Counsel, Pettigo, Watson and Goss, and that her own Counsel and she, herself, always placed the construction upon this Will that they had no right to payments except out of income therefrom and I believe under the rules of Evidence, the Court will consider the construc-

(Testimony of N. A. Davis.)

tion [16] placed upon a contract or any writing by the parties, themselves, in reaching a determination as to what construction the Court may want to place. It is not controlling, but it is recognized as an exception to the general rule, as stated in Jones on "Evidence", that "It is merely an aid to the Court, not controlling in any sense."

Mr. Winter: I would like to read what the Supreme Court says about this question. Reading from the decision in Ithaca Trust Company versus United States. (Reads citation.)

The Court clearly points out it isn't what afterwards she decides, that Mrs. Welsh decided not to use any of the corpus of the trust. The fact that charity might get the full amount, which the testator intended to give them is not subject to her will, what she should do with it.

In this case, Mrs. Welsh is not the testator; she is not the one who is making a bequest to charity. The testator is Mr. Welsh, he makes it to her, says "You can use all the corpus and income of that trust if you want it, without making any accounting, even to this man" but if she doesn't use it, then the residue, what she doesn't use, the fact she doesn't use it, is immaterial.

Mr. Sherwood: Under Section 1415 of Remington's Revised Statutes, the rule is as follows: "All courts and others concerned in the execution of a last will shall have due regard to the direction of the will and the true intent and meaning of the testator in all matters brought before them." [17]

(Testimony of N. A. Davis.)

I offer this evidence not to vary the terms of the Will but merely to give the setting and to show the construction placed upon it by all parties concerned, not for the purpose Counsel refers to in the Ithaca Trust Company case.

I realize the test is as of the date of the death but I wish to show the construction placed upon the Will by the parties, including Counsel for Carrie Welsh, and Carrie Welsh, herself, that they did not read the will in a manner which would permit invasion of the corpus; then, it will be for the Court to determine whether or not the Will, itself, according to the intent of the testator, did permit such invasion, which we deny.

The Court: I have heard no authority which says that the Court cannot hear this testimony. Whether the Court should give any effect to it, is something that we will decide later.

The objection is overruled.

Mr. Winter: Note an exception.

Q. Mr. Davis, do you recall the question?

A. I can say, definitely, that no part of the corpus has ever been paid to Mrs. Welsh since the trust came into our hands.

Q. And, Mr. Davis, was or wasn't Mrs. Carrie Welsh represented by Counsel throughout the Estate proceedings?

A. I don't know whether she had Counsel or not at the time the Will was probated but she did before the settlement.

Q. And who were those Counsel?

(Testimony of N. A. Davis.)

A. John F. Watson represented her—I suppose the firm [18] of Pettigo, Watson & Goss, but Mr. Watson was the one.

Q. And are they the attorneys for the First National Bank of Walla Walla and were they at that time? A. Yes.

Q. Does the First National Bank, at Walla Walla, maintain a Trust Department?

A. They did at that time.

Q. And did you have conferences with Mr. Watson regarding the division of this Estate?

A. Oh, yes.

Mr. Winter: We will object to that as irrelevant and immaterial to any issue in this case.

The Court: Overruled.

Q. And, Mr. Davis can you advise the Court the amount of the allowance that Mrs. Welsh received as a widow's allowance in this Estate?

Mr. Winter: I object to that as irrelevant and immaterial.

The Court: Overruled.

A. \$300.00 a month.

Q. That was during the pendency of the probate proceedings? A. Yes.

Q. Did you discuss that allowance with her before the amount was allowed by the Court?

A. I don't think I did.

Q. Did she ever ask for more than that during the pendency of the probate proceedings?

A. No, sir, she never.

(Testimony of N. A. Davis.)

Q. Did you have personal knowledge of the standard of living that was followed by Mr. and Mrs. Welsh prior to his [19] death and subsequent to his death by Mrs. Welsh?

Mr. Winter: I want to reserve the same objection.

The Court: The same ruling.

A. To some extent; I was in the household and saw him very frequently.

Q. What did you observe with relation to their usual method of living? A. They were frugal.

Q. And they lived, would you say, modestly?

A. Yes.

Q. Without extravagance?

A. Oh, yes, modestly.

Mr. Sherwood: I would like to have these marked, please, as one exhibit.

The Clerk: This will be plaintiff's exhibit No. 1 marked for identification.

Mr. Winter: They are two different pictures?

Mr. Sherwood: Would you rather have them as two different pictures?

Mr. Winter: I think it would be preferable.

The Clerk: They will be marked plaintiff's exhibits 1 and 2, marked for identification; there are two pictures in each exhibit, Your Honor.

Mr. Sherwood: I believe Counsel has advised me he would not object to our failure to bring the photographer to identify them but reserved his right to object on all other grounds.

Q. Showing you plaintiff's exhibit No. 1 for

(Testimony of N. A. Davis.)

identification, I will ask you if you recognize that building shown on those pictures? [20]

A. Yes.

Q. What building is that?

A. That was the house in which Mr. and Mrs. Welsh lived prior to his death and in which they were living when he died.

A. And did Mrs. Welsh continue to live there, following his death?

A. Only a very short time.

Q. Showing you now what is marked plaintiff's exhibit No. 2 for identification, I will ask you what building is shown in those pictures?

A. That is the house in which Mrs. Welsh is now living.

Q. When did she start to occupy that home?

A. Shortly after Mr. Welsh's death; said she couldn't stay in the old house, she saw Mr. Welsh in every corner.

Mr. Sherwood: We offer plaintiff's exhibits 1 and 2.

Mr. Winter: I object to them as irrelevant and immaterial. I don't object on the ground they have not been identified by the photographer. The witness says they are the house.

Mr. Sherwood: I offer them for the purpose of showing, Your Honor—as some evidence of the manner in which the decedent and the surviving spouse lived.

The Court: Let me see them.

Mr. Sherwood: (Hands exhibits to the Court.)

(Testimony of N. A. Davis.)

The Court: The objections to Exhibits 1 and 2 are overruled. 1 and 2 are admitted.

Plaintiff's exhibits Nos. 1 and 2, the photographs just referred to, admitted in evidence and made a part of the record herein. [21]

Q. Was there ever any demand made upon you, acting as Trustee, or Trust Officer of the Baker-Boyer National Bank, or the Baker-Boyer National Bank as Trustee, for any portion of the corpus of the Welsh Estate?

Mr. Winter: I object to that. It has been asked and answered.

Q. (Continuing) —by Mrs. Carrie Welsh or anyone acting in her behalf?

The Court: Read the question.

The Reporter: (Repeats the question.)

Mr. Winter: It wouldn't be within this witness's knowledge, it would be hearsay. She may have made a demand on somebody else in the Baker-Boyer National Bank, not a party here.

The Court: I think the question covers a lot of territory.

Mr. Sherwood: I will reframe my thought there. I will withdraw that question.

Q. Mr. Davis, as Trust Officer of the Baker-Boyer National Bank, at all times since the Welsh Will was admitted to probate, and you qualified as Executor and Trustee, you have had individual charge of that estate? A. Management, I would say.

Q. The supervision of it? A. Yes.

Q. And would you or not have had knowledge

(Testimony of N. A. Davis.)

if a demand had been made upon the Bank, as Trustee, for any portion of Mr. Welsh's community interest in the Estate?

Mr. Winter: I object to that as calling for [22] a conclusion of this witness.

The Court: He may say whether he would or not.

The objection is overruled.

A. I certainly think I would.

Q. And those matters all have to come across your desk, do they, in the ordinary course of business? A. They do come across my desk.

Q. Assume a demand had been made, would that have reached your desk in the ordinary course of business? A. It would have.

Q. And would there have been anything that would have prevented it or caused it to reach the desk of some other officer of the Bank instead of your own?

A. If I had, it would have come to mine, afterwards.

Q. Those facts being true, Mr. Davis, can you tell the Court of your own knowledge whether or not any demand has been made by Carrie Welsh or anyone acting as her authorized representative for any portion of the principal of the trust?

Mr. Winter: If the Court please, I object to it; by Counsel's own question, he admits it is leading; I object to it on the ground it is leading, putting the answer in the witness's mouth.

The Court: I think so.

(Testimony of N. A. Davis.)

I will say this, further, that the most this witness can say is that the demand was made that he knows of or none was made that he knows of.

Mr. Sherwood: And that if one was made or wasn't made he would know it.

The Court: The most he can say, he thinks he knows [23] it. A. That is right.

Q. Mr. Davis—I will ask the question in a different form, not intending to infringe on Your Honor's ruling—do you know of any demand having been made by Mrs. Welsh or anyone acting in her behalf for the principle of this trust or any portion of it? A. No.

Q. Now, what records does the Baker-Boyer National Bank maintain relating to this particular trust?

A. They keep the usual trust records that are kept by most trust Departments, I think, that are properly managed.

Q. You are required to keep that record by law?

A. Yes, we are by the Federal——

Q. (Interrupting): Now, Mr. Davis, since the inception of this trust, have you maintained accurate records of the income from the trust and of the principal items of property which make up the trust, itself? A. Yes.

Q. Do you have those records with you or photostatic copies of the same? A. Yes.

Mr. Sherwood: I will have this marked, next.

The Clerk: Plaintiff's exhibit No. 3, marked for

(Testimony of N. A. Davis.)

identification, and Plaintiff's exhibits No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, and No. 10, marked for identification.

Q. Mr. Davis, are you, of your own knowledge, familiar with the extent of the property which went to Mrs. Welsh [24] as her community interest in this Estate? A. Yes.

Q. What was that property, the amount of it, approximately? A. About two hundred—

Mr. Winter: (Interrupting): We object to that. The stipulation as to the distribution, decree of distribution, is in evidence.

Mr. Sherwood: I will withdraw it.

The Court: I will sustain the objection.

Q. Do you know, approximately, the income from that undivided half interest of the property Mrs. Welsh has now set aside to her, of the estate?

A. I have no knowledge of the income of it.

Q. It is income-producing properties?

A. Yes.

Q. You are familiar with the extent of the income arising from the trust property of the Welsh Estate?

A. Yes.

Q. Showing you what are marked Plaintiff's Exhibits 3 to 10, inclusive, marked for identification, I will ask you what they are?

A. They are photographic copies of the trust ledger, showing the George T. Welsh testamentary trust from the date it was opened as a trust on our books, on May 8th, 1938, up to January 24th, 1942, just as they show.

(Testimony of N. A. Davis.)

Q. Does that show all of the properties that came into the possession of the Baker-Boyer National Bank as Trustee of the Welsh Estate?

A. Yes.

Q. Together with the income arising therefrom?

[25]

A. Yes.

Q. And, are these records kept under your supervision, direct supervision?

A. Yes.

Q. And they have been throughout this period?

A. Yes.

Q. And you are familiar with the items that make up these accounts?

A. Yes.

Q. And have knowledge of the entries shown by these exhibits for identification, marked for identification?

A. Yes.

Q. And they are true and accurate, to the best of your knowledge?

A. They are.

Q. And they were kept in the regular order and procedure of your business?

A. Yes.

Mr. Sherwood: I will offer Plaintiff's Exhibits 3 to 10, inclusive.

Mr. Winter: We will object to them, if the Court please, on the grounds they are irrelevant and immaterial—as to what income the trust may have had after the decease, that is not at issue here whatsoever and I would like to further inquire as to the Exhibits before they are received.

The Court: You may look at them.

Mr. Winter: I would like to question the witness with respect to the Exhibits.

(Testimony of N. A. Davis.)

Mr. Sherwood: Before the offer is made, I [26] wish to ask one question.

Q. These are photostatic copies of the original records that you, personally, had made of the records? A. Yes.

Q. And within the last few days? A. Yes.

Cross Examination

By Mr. Winter:

Q. Do you have the original records with you?

A. No.

Q. What do you mean when you say you had them, personally sent them out and had someone photograph them?

A. I carried them out to the photographer.

Q. And told him to photograph them?

A. Told 'her' to.

Q. Do you have a photographer there of your own?

A. No—a public photographer.

Mr. Winter: This witness can't testify she photographed the ones he took out there.

Direct Examination (Cont'd)

By Mr. Sherwood:

Q. Since they were photographed, have you checked them against the originals to see if they were accurate reproductions?

A. Spot-checked them, didn't check every item.

Q. And you have had these photostats in your personal possession and brought them on the train yourself, and they haven't been in the possession of

(Testimony of N. A. Davis.)

the Attorneys [27] until you brought them here to-day? A. No, sir.

Mr. Winter: Object, that they are not the best evidence.

Q. Have you spot-checked these, each one against the originals? (Indicating)

A. Yes, I did.

Mr. Sherwood: We reoffer them.

The Court: He hasn't said what the result of his spot-check was.

Q. They are accurate reproductions of the originals and complete reportrayals of the originals?

A. Yes, they are.

Mr. Winter: Object to them. They are not the best evidence, if the Court please. The rule is the originals must be in Court.

Mr. Sherwood: I don't believe that rule applies to photostatic or carbon copies.

The Court: Are you objecting for any other reason?

Mr. Winter: Yes, on the ground of immateriality, if the Court please. I will waive my objection to their being copies, if the Court thinks they are material, I won't take the time of the Court to have the case continued for the originals.

The Court: I will not say I think they are material.

Mr. Winter: May I ask one question? They might be material for our purpose. We may waive that objection. [28]

(Testimony of N. A. Davis.)

Cross-Examination (Cont'd)

By Mr. Winter:

Q. Does it show the income monthly to the trust?

A. Shows day by day, every day the entry is made.

Q. On what column does it show the income?

A. (Indicating on exhibit): These are all items—now, here is cash income, debit, credit, balance cash principle, debit, credit, balance; now, this was inventory that came in.

Q. Do you total the yearly income?

A. It shows right here; it is totaled every day. (Indicating on exhibit.)

Q. What is the average daily income, then? I want to know what the income to the trust was by the year, do you know that? A. Yes.

Q. The Exhibit does not show it?

A. It does, yes.

Q. Doesn't show it in the total?

A. No, because taxes, things, are taken out as you go along, if there is any charge to the income you see, and then you will find here—(Indicating on Exhibit.)

Q. (Interrupting): You haven't totaled up the total amount of the income to the trust since you started? A. Yes, I have the figure.

Q. But that isn't shown on the Exhibit?

A. It is shown there (indicating), but you will have to add it; it has been turned over to Mrs. Welsh.

Q. All the income is turned over?

A. All the net income [29]

(Testimony of N. A. Davis.)

Q. All the net income up to that time?

A. Yes. May I show you?

Q. Do you also have her accounts at your Bank?

A. Yes, we do, part of them; she has accounts in various Banks. For instance, here is December 31st.

(Indicating on Exhibit.)

Q. I think I understand.

A. Net income \$4,514.11; Now, on January 7th, we gave her a check for that amount, see?

Q. Yes.

A. Do you want the total?

Q. No, I just wondered if Your Exhibits show it?

Mr. Winter: We still think the exhibits, in their present form, are irrelevant and immaterial. We will waive any objection to their being copies.

The Court: I am not impressed they are very important, but they might be helpful in arriving at some fact that I might deem material.

I will overrule the objection, admitting Exhibits 3 to 10, inclusive.

Plaintiff's exhibits 3 to 10, inclusive, photo-static copies of records, last above referred to, admitted in evidence and made a part of the record herein.

Direct Examination (Cont'd)

By Mr. Sherwood:

Q. Mr. Davis, can you refer to Exhibits 3 to 10, inclusive, and advise the Court as to the total amount of the principle of the trust still in the possession and [30] control of the Bank?

(Testimony of N. A. Davis.)

Mr. Winter: The same objection, it is irrelevant, immaterial.

The Court: Overruled.

A. \$187,670.76,—is the date closed there. (Indicating on Exhibit.)

Q. That was what date? January 24, 1942?

A. January 24, 1942.

Q. And have you still on hand any net income not paid over to Carrie Welsh?

A. Whatever has been since the 1st of January 1942, yes.

Q. You have paid over all the net income up to the 1st of the year, the year 1942?

A. Yes, that is right.

Q. And did you verify, on behalf of the Baker-Boyer National Bank the Final Account and Report and Petition for Distribution in the Welsh Estate?

A. Yes.

Q. The source of the figures that went into that Account were derived from your books and records, kept in the regular course of business?

Mr. Winter: If the Court please, I think we ought to have the witness testify. Every one of these questions is leading—the witness is always saying “Yes”. This is not a divorce calendar. I think the witness should answer.

The Court: You may read the question.

The Reporter: (Repeats the question.)

Mr. Sherwood: I think that is leading, Your Honor. [31]

(Testimony of N. A. Davis.)

The Court: Do you withdraw it?

Mr. Sherwood: Yes, Your Honor.

The Court: All right.

Mr. Winter: We have stipulated, if the Court please, that the Inventory, which was filed as a part of the record—isn't the Inventory part of the record?

Mr. Sherwood: The Inventory hasn't been filed, just the Final Account, but I don't think it is important, anyway.

Q. Mr. Davis, under the Federal Rules, regarding the conducting of a trust, you are required to maintain at all times a copy of any statement rendered to the beneficiary of the trust.

Mr. Winter: I object to that, asking this witness to construe the law for a conclusion of the witness, entirely.

The Court: He may state if he understands——

Q. (Interrupting) Does the Bank maintain, as a part of its permanent records, a copy of the original statements given to the beneficiary of the trust, of each trust that you have there? (Indicating).

A. Yes.

Q. And you have maintained copies pursuant to that Federal Regulation in this trust Estate?

A. Yes.

Q. And how often have you rendered accountings to Carrie Welsh as to the net income from the trust?

A. Once a year, except the first year I believe we rendered it semi-annually, but she said she

(Testimony of N. A. Davis.)

didn't care for it semi-annually, she would rather have it [32] annually, altogether, but she wanted her money twice a year—"never mind about the statement in the middle of the year."

Q. Exhibits 3 to 10, admitted in evidence here, reflect the payment of approximately how much per year?

Mr. Winter: The Exhibits speak for themselves.

The Court: I would just as soon hear it.

Q. For the benefit of the Court?

A. Well, the trust was opened, I think, on May 9th, 1938, and from that time up until December 31st, 1941, which would be less than four years, \$28,105.00 was paid to Mrs. Welsh as net income, if I have added it correctly?

Mr. Winter: What is that figure, again?

A. \$28,105.00.

Q. And, Mr. Davis, you testified on Counsel's examination, that she maintains, at least, some of her accounts in your Bank? A. Yes.

Q. And, can you apprise the Court as to whether or not that is a substantial account, or those accounts are substantial?

A. Well, we consider them substantial; they run into five figures.

Q. Do you know, of your own knowledge, she maintains accounts in other banking institutions in Walla Walla?

Mr. Winter: Of your own knowledge?

Q. Yes or no?

(Testimony of N. A. Davis.)

A. I don't know what you would consider "my own knowledge"; she told me—— [33]

Mr. Winter: (Interrupting) Have you seen them? A. She told me she had.

Mr. Winter: Your answer is "no", isn't it?

A. Yes. I have to get my knowledge from somebody; I might get it from the institution or from her.

Q. She has an intermediary you advise with, assisting Mrs. Welsh in some of her business affairs?

A. Yes.

Q. And you, from time to time, examine her bank books? A. Yes.

Q. In other banks as well as your own?

A. No.

Mr. Winter: Counsel is leading the witness in every question.

The Court: He led the witness but, in this particular instance, the witness didn't follow him.

Mr. Winter: I wasn't listening to the answer.

The Court: He tried to lead the witness.

Mr. Sherwood: *I* wasn't my purpose to lead; I was trying to shorten this up.

Q. Mr. Davis, do you recall the facts relating to the partition of the Estate, what led up to that partition?

A. You mean, the division of the Estate?

Q. Yes.

A. Yes, that is our duty to divide it, as the Executor.

(Testimony of N. A. Davis.)

Q. And the Bank caused to be appointed three Commissioners to appraise the property before that division was consummated? [34]

A. The Bank didn't appoint them, no.

Q. Caused the Court to appoint them?

A. I don't know "caused the Court", the Court—

Q. (Interrupting) You petitioned for the disposition of the properties? A. Yes.

Q. Now, there was an additional State tax assessment forwarded to the Bank as Executor some time following the original assessment, Mr. Davis?

A. Yes.

Q. And before paying the additional State tax assessment, were you endeavoring to make a compromise with the Government?

Mr. Winter: I object to that as irrelevant and immaterial. The facts have all been stipulated with respect to the assessment, when it was paid, who paid it.

The Court: What was the purpose?

Mr. Sherwood: For the purpose of explaining the order that was entered on March 29th, 1940, in the Probate Cause relating to the State tax; I offer it to show that we endeavored to compromise with the Federal Government about that time and we couldn't get the State to fix the tax, so that we could take our deduction for State Inheritance Tax from the Federal tax and we were trying to work it out, between the two Departments, and that finally led up to the Court proceedings resulting

(Testimony of N. A. Davis.)

in the Order of March 29th, 1940, and this is a preliminary question, showing there were negotiations for compromise pending at that time. [35]

The Court: How long is your case going to take?

Mr. Sherwood: This witness, and one short witness, that is all.

The Court: I will overrule the objection.

Q. Were there compromise negotiations pending with the Federal and State Tax Officials just prior and subsequent to the additional assessment of taxes by the Federal Government?

A. There was a compromise pending with the technical staff.

Q. What was the first notification you received of that additional assessment?

A. From the State?

Q. From the Federal Government?

Mr. Winter: I object to that. The assessment shows on its face.

A. I don't remember the date.

The Court: The objection is withdrawn, isn't it?

Mr. Winter: Yes, Your Honor.

Q. What steps, if any, did the Bank take through you to obtain settlement of the Inheritance Tax due the State of Washington about that time?

Mr. Winter: I object to that as irrelevant and immaterial.

The Court: Read that question?

(Testimony of N. A. Davis.)

The Reporter: (Repeats the question.)

The Court: You object to that?

Mr. Winter: Yes, Your Honor. [36]

The Court: I make a reservation of ruling as to this and you may proceed to interrogate him with the right of the defense Counsel to cross-examine, without waiving thereby his objection.

Q. Mr. Davis, the State Inheritance Tax carried 8 percent interest and the Federal 6 percent interest—does that refresh your recollection?

A. That is my recollection of it, yes.

Q. And did you, through Mr. Evans, the attorney for the Estate, negotiate with the Washington State Inheritance Tax Division for a settlement of the State Tax about the time of this additional assessment by the Federal Government?

A. We were very anxious to get the tax settled.

Q. To save interest?

A. To save interest and get a settlement.

Q. Did you receive a letter from the Inheritance Tax Escheat Division, which is in evidence here attached to the stipulation?

Mr. Winter: That was for the purpose of showing—

The Court: (Interrupting) We will take a five-minute recess.

(Short recess)

Q. (Continuing, by Mr. Sherwood.) I referred to "Exhibit L" attached to the stipulation just prior to the Recess.

(Testimony of N. A. Davis.)

The Court: This was all under the reservation of ruling; when you finish this offer by testimony, you advise the Court and I will give Mr. Winter the opportunity to cross-examine.

Q. I refer to Exhibit L annexed to and made a part of the [37] stipulation filed in this proceeding. Did you receive that, or was that called to your attention by the Attorney for the Estate?

A. I think, maybe, it was; we didn't receive it, no, not from the State.

Q. It was called to your attention?

A. Yes.

Mr. Winter: I might point out to the Court that is part of the stipulation, for the purpose of showing payment of the State of \$6.07 and for no other purpose, according to the stipulation.

Q. The amount of taxes paid the State of Washington is how much?

Mr. Winter: That is shown on the Exhibit, admitted by the stipulation to show that payment.

Q. Now, Mr. Davis, the total deductions claimed in your state tax return, which is a part of the stipulation and the exhibits annexed thereto, total \$7,942.82, made up of the following items: Funeral Expenses——?

Mr. Winter: (Interrupting) We object to the deductions.

The Court: This is under the offer of proof.

Mr. Winter: I withdraw it, then.

Mr. Sherwood: Then, I will defer asking that

(Testimony of N. A. Davis.)

question, Your Honor, until after he examines under my offer of proof.

Mr. Winter: Have you finished your offer of proof?

Mr. Sherwood: Yes, relating to Exhibit L.

The Court: What was your purpose? [38]

Mr. Sherwood: The purpose of offering L, that a controversy existed between—prior to the entry of the order of March 29, 1940, which was commented upon by Counsel in his opening statement, which Order was entered in the Welsh Estate probate proceedings in fixing the additional State Inheritance tax and that explains the entry of that Order at a date following the entry of the decree of distribution.

The Court: All right, you may cross-examine, if you please, without waiver.

Mr. Winter: We will rely on our objection.

No cross-examination of that issue.

The Court: All right.

Q. (By Mr. Sherwood, continuing Direct Examination.) Mr. Davis, the total deductions claimed in the State tax return, which is a part of the stipulation and exhibits annexed thereto, is \$7,942.82, made up of the following items: Funeral Expense, \$290.27; Executor's fees, \$2,750.00; Attorney's fees, \$2750.00; Miscellaneous Administration Expense, \$138.46; Claims filed in the Estate, \$214.09; support of surviving widow, \$1800.00—I will ask you if those items were all bona fide expenses of the Estate?

(Testimony of N. A. Davis.)

Mr. Winter: I object to that as irrelevant and immaterial, there is no issue here as to whether or not any other deductions other than—or claim for credits other than the two amounts which are alleged to have been donated to charity or given to charity under the Will. The plaintiff, by his claim of refund and by his suit made no other issue as to whether or not [39] the Commissioner erred in any other items.

The Court: Is that the purpose?

Mr. Sherwood: The burden is on the taxpayer in these proceedings to establish the amount of tax that may be due and I offer to show those are bona fide deductible expenses of the Estate, shown on the state tax return and if he admits we are entitled to those deductions, I won't have to prove them.

Mr. Winter: We admit he is entitled to every deduction allowed by the Commissioner as shown on the assessment list.

The Court: Did the Commissioner allow those deductions?

Mr. Sherwood: Tentatively.

The Court: He now admitted you are entitled to all deductions which the Commissioner allowed.

Mr. Winter: Only tentative allowance—first, he allowed over \$1,000 tentatively as a payment to the State; that was later reduced to the amount actually paid of \$600.00, an additional tax assessed for that amount not here in issue.

(Testimony of N. A. Davis.)

The Court: The deductions of the Commissioner allowed, you concede are proper?

Mr. Winter: Yes, Your Honor.

The Court: Is there any necessity for this testimony, then?

Mr. Sherwood: There isn't now.

Mr. Winter: The burden of proof is on the plaintiff to show these specific amounts we are talking about are allowable deductions; that is the only issue.

Mr. Sherwood: You may cross-examine. [40]

Cross Examination

By Mr. Winter:

Q. I think you stated, Mr. Davis, that Mrs. Welsh now has a manager or a financial adviser?

A. No, I think that was Counsel; she has a financial adviser, I would say.

Q. Do you know who that is? A. Yes.

Q. Who is it?

A. Nettie Galbreath, Principal of St. Paul's School, lives across the Street; she has been a friend of theirs many, many years, of the family.

Q. Does she live with Mrs. Welsh?

A. No.

Q. Who does Mrs. Welsh have taking care of her? A. A housekeeper.

Q. And nurse?

A. At times; I think mostly a housekeeper and she has a doctor who comes to see her every few days.

Q. More than one doctor, or several?

(Testimony of N. A. Davis.)

A. I think one, as far as I know.

Q. You said she moved out of the house. That is, the old homestead? A. Yes.

Q. Shortly after? A. Yes.

Q. In the partition, without looking it up, who got the old homestead? Was that part of her half of the community?

A. Mr. Winter, the old homestead was sold before the [41] estate was closed and Mrs. Welsh signed the contract, along with the Executor to show she approved it,—on installment payments, because it shouldn't stand there idle, you know.

Q. How long after Mr. Welsh's death would you say approximately? You said "a short time", what do you mean by "a short time"?

A. She moved.

Q. Yes, a month or two months or years?

A. No, within two months, I am quite sure.

Q. Did she build this new house?

A. No, she bought it.

Q. Did she come to you for the money to buy this house, as trustee?

A. Yes, not as trustee, executor at that time, she says "You must buy that house", we talked to the Judge about it, he said there was plenty of money there and if it would help Mrs. Welsh to be more satisfied to go ahead and buy it and he would approve it; she approved and o. k.'d it and she took it as a part of her distribution for what we paid for it, \$5550.00.

(Testimony of N. A. Davis.)

Q. You say you have been advised she has accounts in other banks? A. Yes.

Q. Other investments?

A. Yes, Miss Galbreath told me she had.

Q. Has she a safety deposit box in your bank?

A. I think not.

Q. You don't know whether she has in some other bank? A. I couldn't say. [42]

Q. Are you at all familiar with her investments, personally?

A. Mr. Winter, I am familiar with all the investments that went to her from the estate, of course, and I doubt very much if she has made much investments since.

Q. I didn't ask you if you "doubted"—do you know of your own knowledge? A. No.

Q. You wouldn't know to what extent they would have been, of course? A. No.

Q. You don't act as her financial adviser?

A. No, sir.

Q. You don't know of your own knowledge whether she has used all of the income for her own support, do you?

A. No, I don't, of my own knowledge.

Q. You don't know how much of her own separate property she has had, she used?

A. I know she has the ranches yet.

Q. Do you know of your own knowledge? Have you seen the deeds? Examined the records to them?

A. I know she got them and it would come to my knowledge if she passed them out.

(Testimony of N. A. Davis.)

Q. That is the only reason you know she has got them? A. Yes.

Q. You don't know what encumbrances she has got on them, of your own knowledge?

A. We see a copy of the records every day.

Q. And you look at them? That is your only knowledge? A. No. [43]

Q. If she had been given mortgages and hadn't recorded them, you wouldn't know, would you?

A. No, sir.

Q. You don't know whether she deeded all her property away, her separate property to her children and not recorded it?

A. I know she deeded one place that Mr. Welsh bequeathed his half interest to his son and she turned around and deeded her half right away to him. That is a small place, small in value.

Mr. Winter: That is all.

Redirect Examination

By Mr. Sherwood:

Q. That is the piece of property mentioned in Mr. Welsh's will as being the real estate he wanted his son to share in?

A. Yes, it was bequeathed to him in his will, his half interest.

Q. And she deeded her half interest to him following Mr. Welsh's death? A. Yes.

Q. The consideration for the new house was \$5500.00?

Mr. Winter: That is leading the witness.

(Testimony of N. A. Davis.)

A. I just said that, in answer to your question, Mr. Winter.

Mr. Winter: I am not talking to Mr. Davis.

The Court: Sustained.

Q. Mr. Davis, could you tell me what the old house sold for, of your own knowledge? [44]

A. Yes.

Q. How much?

A. \$3600.00, including the carpets on the house, afterwards valued at \$200.00, considering the real estate \$3400.

Q. And there were no mortgages on any of the real estate property at the time it came into your possession?

A. No, sir.

Mr. Sherwood: That is all.

(Witness Excused)

MRS. HOWARD MULLEN,

called as a witness on behalf of the plaintiff herein, being first duly sworn, testified as follows:

Direct Examination

By Mr. Sherwood:

Q. State your full name, please?

A. Mrs. Howard Mullen.

Q. Where do you live?

A. 910 Hobson Street, Walla Walla.

Q. Did you know Mr. George T. Welsh in his lifetime?

A. Yes, I did, I knew him the last four years.

(Testimony of Mrs. Howard Mullen)

Q. And did you know Mrs. Welsh?

A. Yes, I know her.

Q. Did you reside in their home? A. Yes.

Q. During what period?

A. The last four years of Mr. Welsh's life.

[45]

Q. And did you reside there following his death?

A. For about two weeks.

Q. And, will you tell the Court, from your observance of the manner of their living there and the home, what standard of living they observed?

A. They lived very—

Mr. Winter: (Interrupting) I object to that as irrelevant and immaterial.

The Court: Overruled.

A. (Continuing)—modestly, very conservative; had what they wanted but they weren't extravagant.

Q. And what was Mrs. Welsh's general condition of health at the time of Mr. Welsh's death?

A. She was very poorly.

Mr. Winter: That is a conclusion. This witness is not qualified to testify to a person's health. She can testify to the facts, what she observed.

The Court: I think a layman, who lived in the house four years, is qualified to testify as to the health of a resident of the house. The Court is not required to accept their judgment as controlling.

The objection is overruled.

Q. What did you observe as to her general condition of health at that time?

(Testimony of Mrs. Howard Mullen)

A. She was very poorly, wasn't allowed to walk around home alone, we had to help her whenever she walked anywhere.

Q. For the four years previous to the time you left there? When you first went there, what was the condition of [46] her health?

A. She was poorly then.

Mr. Sherwood: I think that is all. (Witness excused)

Mr. Sherwood: Is there any question about the nature of this Methodist Foundation, as a proper——?

Mr. Winter: (Interrupting) The Commissioner made no issue—as a charitable institution, merely as to the amount and——

The Court: (Interrupting) It is conceded then——?

Mr. Winter: (Interrupting) They are a charitable institution.

The Court: This is a charitable institution?

Mr. Winter: Yes.

Mr. Sherwood: That is public charity, within the meaning of the Act, that is as to the old, aged and poor people and worthy young people that are provided for under the will?

Mr. Winter: I don't understand—the will speaks for itself; we are not offering any evidence to controvert it, on that point, I am not conceding every one to whom the trustee pays may be charity, but the Commissioner has made no issue of it, it is merely on the grounds that I have no evidence on it.

Mr. Sherwood: Then, let me understand, the burden is on us to prove——?

The Court: (Interrupting) I understand that, as far as the organization——? [47]

Mr. Winter: (Interrupting) As far as the bequest to charity is concerned, the Government made no issue that they are not bequests to charity, if they are specific and come within the terms of being in an amount certain and passing as such at the time of the testator's death.

The Court: Well, assuming you are not making any objection, are you conceding it?

Mr. Winter: We are conceding it.

The Court: You concede those are charities?

Mr. Winter: As such, yes, both items.

Mr. Sherwood: Then I withdraw this witness.

Thank you, Reverend Sprague.

(Witness leaves the Stand.)

Mr. Sherwood: I will call Mr. Evans.

MARVIN EVANS,

called as a witness on behalf of the plaintiff herein, being first duly sworn, testified as follows:

Direct Examination

By Mr. Sherwood:

Q. Your name is Marvin Evans? A. Yes.

Q. What is your profession?

A. Attorney-at-Law.

(Testimony of Marvin Evans.)

Q. How long have you practiced law, as a member of the Bar of the State of Washington?

A. Ever since 1894. [48]

Q. Mr. Evans, you were well acquainted with George T. Welsh in his lifetime? A. Yes.

Q. And acted as his attorney for sometime?

A. Yes.

Q. For how many years?

A. Well, I would have to estimate that; I kept no record of it. I suppose, 10, 12, 15 years, something like that.

Q. And you were, of course, acquainted with Carrie, his wife? A. Yes.

Q. You were in and out of their home, I assume?

A. Yes.

Q. And they were at your office on occasions?

A. I mean him, but not Mrs. Welsh.

Q. Now, just prior to 1930, the date when this will was executed by Mr. Welsh, did you have some preliminary conversations with Mr. Welsh and Mrs. Welsh regarding the will? A. Yes.

Mr. Sherwood: I assume you want to make the same objection?

Mr. Winter: Not to that question, we have no objection.

Q. You drew this will which is in evidence here as a part of the stipulation? A. I did.

Q. And you were advised by Mr. Welsh of the nature and extent of his properties? [49]

Mr. Winter: I object to that—but, I will withdraw that objection to the question, and object to

(Testimony of Marvin Evans.)

it on the ground it is leading. He doesn't have to lead Mr. Evans, I am sure.

The Court: It is leading, but I will let it stand.

A. What is the question?

Q. Were you acquainted with the extent of their community property holdings?

A. I knew about their lands definitely; I didn't know all about their securities, like bonds and stocks; I didn't know all about them.

Q. Mr. Evans, will you just briefly tell the Court what lands were owned, what the nature of the lands owned by them was in 1930?

A. Chiefly, farmlands.

Q. Wheat-growing lands? A. Yes.

Q. Would they be income yielding properties?

A. Yes.

Q. Substantial income? A. Yes.

Q. And Mr. Welsh had been a wheat farmer for most of the years of his life there in Walla Walla Valley?

Mr. Winter: I object to that as leading and the witness only knew him for ten or fifteen years.

A. I have known them for many years, transacted business with them 12 or 15 years.

The Court: The objection is overruled. I will let him answer. [50]

I might say, Counsel, that any time you get a question that you really wish answered, because you deem it is important, the less leading the question is the more persuasive the answer will be.

Mr. Sherwood: I realize that, Your Honor.

(Testimony of Marvin Evans.)

The Court: All right.

Q. Now, Mr. Evans, what conversation did you have jointly with Mrs. Welsh and Mr. Welsh prior to the drawing of Mr. Welsh's will? who was present and when did it take place?

Mr. Winter: I object to it.

The Court: You are objecting to this conversation?

Mr. Winter: Yes, Your Honor.

The Court: I will make the same reservation of ruling on this phase that I made as to Mr. Davis' examination.

A. In the first instance——

The Court: (Interrupting) Reservation of ruling on a deemed offer of proof.

A. In the first instance, Mr. Welsh came to my office and said in substance that he and Mrs. Welsh intended to make their wills and wanted me to come down and discuss the matter with them. A date was agreed upon and I did go down to the house and had a conference with both Mr. and Mrs. Welsh, all three of us being in the room at the same time and present.

Q. Now, how long was that before the will was executed?

A. Well, I think that it was approximately a month.

Q. Now, Mr. Evans, did Mr. Welsh—just tell what Mr. Welsh [51] told you in the presence of his wife there at that time?

A. Of course, I can't repeat his language; I can

(Testimony of Marvin Evans.)

repeat the substance of his language. He told me in her presence that they wanted to will—he wanted to will his estate in trust; he told me the beneficiaries to be made of the trust; he told me the amounts that he had decided upon to give to the beneficiaries of these trusts.

Q. Did he tell you of his intentions regarding his grandson and son as to the specific amounts that he wanted to go to them?

A. Well, as to his son, he wanted to give to his son his community half in a certain property lying between Walla Walla and Lowden, subject, however, to a life estate in the property to Mrs. Welsh as long as she lived.

Q. And to the grandson?

A. Well, now, of course, that is the son—I didn't complete that. He wanted to will him the income on \$30,000.00 during his lifetime, subject to the life estate in Mrs. Welsh.

Q. And, as to the grandson?

A. The same provision, only the amount was \$12,500.00.

Q. He seemed to have those amounts definitely in mind at that time, did he?

A. He did.

Q. Did you discuss with him the amounts that would go to the trust?

A. I, of course, didn't know how much the amounts would be, [52] that would depend upon the size of his estate.

(Testimony of Marvin Evans.)

Q. Did he seem to have a complete knowledge of the extent of his estate, and did she?

A. Of course, I had quite an extensive knowledge of his estate, myself, other than more or less details as to stocks and bonds I didn't know.

Q. Did they seem to have an appreciation of the extent of their estates? A. Yes.

Q. Both of them?

A. Apparently, as far as I could see.

Q. Now, Mr. Evans, I will ask you if at any time during the probate proceedings, upon this estate, Carrie Welsh, or anyone acting in her behalf, including her attorneys, Pettigo, Watson & Goss, ever made any contention, demand for any part of the corpus or the principal of the undivided community interest of Mr. Welsh? A. No.

The Court: This is still in your reservation of ruling?

Mr. Sherwood: Yes.

Q. And did Mrs. Welsh or her attorney or anyone acting in her behalf ever in writing or orally approach you as Attorney for the Estate, for the purpose of obtaining any portion of the principal or corpus of the George T. Welsh trust estate?

A. No, sir.

Q. And, did Mr. Watson, of counsel for Mrs. Welsh, prepare or assist in the preparation of the stipulation which is in evidence here as a part of the original stipulation [53] filed in this proceeding?

A. He and I together worked it out.

(Testimony of Marvin Evans.)

Q. And did he take the acknowledgment of Mrs. Carrie Welsh on that stipulation?

A. He did.

Q. Was there any discussion between you attorneys acting for—you, acting for the estate, executor and trustee, and Mr. Watson, acting for Mrs. Welsh, regarding the estate taxes at the time that the stipulation was drawn?

A. Well, as I understand your question, I don't recall that there was.

Q. And, did you have in mind, when you prepared that stipulation,—you, acting for the estate, that it had behind it any purpose to affect the amount of the estate taxes?

A. I realized, of course, there would have to be estate tax and estate inheritance tax upon the residue of Mr. Welsh's half.

Q. But when you prepared the stipulation, did you prepare the stipulation for the expressed purpose of affecting the amount of the tax?

A. Yes, in order to determine what the property was going to be.

Q. In order to determine—? what property would be?

A. What property would be decreed to the Welsh estate and what property would be decreed to Mrs. Welsh.

Q. But when you prepared the stipulation, you didn't prepare it for the purpose of affecting, reducing the estate taxes? It was merely for a partition? [54]

A. Yes.

(Testimony of Marvin Evans.)

Q. And did you follow the statutory procedure in effecting that partition? A. I did.

Q. Were Commissioners appointed?

A. They were.

The Court: This witness answered a question, when you put it to him as a question, one way—you gave a very leading question and he answered it the other way.

Mr. Sherwood: Your Honor, I think that he had one thing in mind and I had another at the time he answered the first time—I just wanted to ask it over again to straighten it out so that the fact would be brought out.

The Court: If there is any seeming contradiction in the two answers, I have already indicated to you which answer is apt to be the more persuasive.

Mr. Sherwood: I don't think he understood my question the first time, Your Honor. He was looking upon it as a lawyer, rather than as a factual matter. I think he said, of course an estate tax was due, that would affect the estate tax, the stipulation; I wanted to bring out the stipulation wasn't prepared, we having anything in mind about reducing it through the stipulation.

The Court: Counsel, you make it very difficult for the Court, if you think he doesn't understand the question and are hoping for a different answer; I think the clarifying question should not be leading. [55]

Mr. Sherwood: I didn't intend it as such. I just wanted to straighten the witness out.

(Testimony of Marvin Evans.)

Q. Mr. Evans, would you advise the Court the true answer, the fact as to the matter of the preparation of the stipulation in relation to the matter of estate taxes?

A. Well, if I get your question, when we prepared the stipulation—let the hammer fall where it would, where it might, whenever it came to the George T. Welsh Estate, of course there would be a tax to be paid on that and likewise—on that, yes.

Q. And that that went in trust for charitable purposes, you considered would not be subject to the estate tax?

A. I didn't so understand it; I thought, wouldn't be subject to a tax.

Q. And that procedure wasn't initiated, the use of the stipulation, to evade a tax?

A. No, sir, no, not part of that, anyway.

Q. Now, Mr. Evans, could you tell the Court whether or not Mr. and Mrs. Welsh lived extravagantly or otherwise?

A. They lived economically; they lived plainly, but they were quite conservative and frugal.

Mr. Sherwood: I think that is all.

Mr. Winter: No cross-examination.

A. (Volunteering) There is on question you didn't ask me about, that was taken up with me by Mr. Welsh—

The Court: (Interrupting) I would suggest that you talk with Counsel privately and then if there is a question to be asked, that he ask it.

A. All right. [56]

(Testimony of Marvin Evans.)

Mr. Winter: Then I withdraw my waiver of cross-examination, Your Honor.

Mr. Sherwood: That is all, Your Honor.

Mr. Winter: No cross-examination.

(Witness Excused)

Mr. Sherwood: If all the Exhibits are offered and received in evidence, we rest.

The Court: All of the Exhibits offered, have been received in evidence.

Mr. Winter: If the Court please, I would like to have marked for identification as defendant's exhibit—

The Clerk: Interrupting "A", marked for identification.

Mr. Winter: The purpose is to refute any inference with respect to the—I only offer it in rebuttal to the evidence. It is an offer of proof with respect to a compromise before the Technical Staff.

I don't know the purpose of the testimony offered but it is to rebut any and it is also in compliance with your subpoena served upon the Government to produce the Technical Staff Report; that is a waiver of restrictions and consent to the *assets*.

There was some question, the date of the tax was waived and the tax was assessed, as to whether or not it was prior or subsequent to the filing of the petition in the Superior Court.

We will offer in evidence Government's Exhibits A and B, certified copies of the waiver of restriction [57] against immediate assessment of tax and

memorandum, Technical Staff, in the Estate of George T. Welch, deceased.

Mr. Poe: Mr. Winter, is that for the purpose of answering the allegation of the complaint, that the plaintiff had no opportunity to go before the Board of Tax Appeals in relation to the last assessment made against the taxpayer?

Mr. Winter: Shows tentative allowance allowed with respect to the estate and in answer, also, to the date of conference with the Technical Staff, being prior to 1940, at the time you filed your petition in the State Court and shows the date of the assessment.

It is in rebuttal to your evidence.

Mr. Poe: We have had our day in Court, so we don't mind that last deficiency being given without a 90-day letter, which was assessed without such a letter.

Mr. Winter: That is consent of the assessment and shows the basis of the assessment, based upon an agreement reached before the Technical Staff.

The Court: Exhibit A and Exhibit B are offered?

Mr. Winter: Yes, Your Honor.

The Court: Any objection?

Mr. Poe: No objection.

The Court: Exhibits A and B are admitted.

Defendants' Exhibits A and B, the documents last above referred to, waiver of restriction [58] against immediate assessment of tax and memorandum, Technical Staff, admitted in evidence and made a part of the record herein.

DEFENDANT'S EXHIBIT A

(Cut)

United States of America
 Treasury Department
 Washington

January 29, 1942.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of Pacific Division, Technical Staff Action Memorandum dated December 28, 1939, (with supporting statement attached), to Internal Revenue Agent in Charge, Seattle, Washington, signed by Virgil Bean, Head of Division, in re: Baker-Boyer National Bank of Walla Walla, Washington, Executor, Estate of George T. Welch, Deceased, on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[Seal]

F. A. BIRGFELD,

Chief Clerk, Treasury Department.

MW WWB Amr BM SSF JPW H

Post-Reviewed March 13, 1940

C-TS:PD

S:WWB

BUREAU RECORD

Pacific Division, Technical Staff

Action Memorandum

In re Conference Report dated June 17, 1939
(MT:ET-2125-Washington) T.S. No. E-2

Taxpayer:

Estate of George T. Welch, Deceased,
Baker-Boyer National Bank of Walla Walla,
Washington, Executor.

Represented by:

Cameron Sherwood,
Marvin Evans,
Walla Walla, Washington.

Burns Poe,
Tacoma, Washington.

Collection District: Washington.

Date of Death	Kind of Tax	Deficiency found by I. R. Agt. in Chg.	Limitation
April 15, 1937	Estate	\$21,417.55	March 17, 1941

International Revenue Agent in Charge,
Seattle, Washington.

I return herewith the file relating to the above-described case, accompanied by a statement which embodies a proposal for closing the case. This statement has my approval and is incorporated as a part of the record of the case. The Staff Division has reached the following—

DECISION:

The finding of the Internal Revenue Agent in Charge in this case, as set forth above, is sustained.

The taxpayer accepts the foregoing determination, as set forth in the accompanying agreement, which waives the statutory restrictions on assessment and collection.

Appropriate action should be taken under the provisions of paragraph 7 of the Commissioner's memorandum establishing this Division.

By direction of the Commissioner:

VIRGIL BEAN

Head of Division.

(Margin Notation)—3/22/40 No. 81 in evidence.

W.W.B. 12/21/39

J.B.H. 12/21/39

Date: Dec. 29, 1939

Case examined 3-22-40 AWN

Pacific Division, Technical Staff
Supporting Statement

In re Conference Report dated June 17, 1939
(MT:ET-2125-Washington) T.S. No. E-2

Taxpayer:

Estate of George T. Welch, Deceased,
Baker-Boyer National Bank of Walla Walla,
Washington, Executor.

Represented by:

Cameron Sherwood,
Walla Walla, Washington.

Burns Poe,
Tacoma, Washington.

Collection District: Washington.

Date of Death	Kind of Tax	Deficiency found by I. R. Agt. in Chg.	Limitation
April 15, 1937	Estate	\$21,417.55	March 17, 1941

Head of Division:

The above-entitled case, referred to the Pacific Division of the Technical Staff at the request of the taxpayer, has been considered by the undersigned.

In response to requests conferences were granted at Seattle, Washington, on August 25 and 28, September 1, 8 and 27, October 4 and 12, November 1, and December 5, 1939, for the purpose of reaching a settlement of the case. At the conference on August 25, Burns Poe and Marvin Evans, attorneys, and N. A. Davis, Vice President of Baker-Boyer National Bank of Walla Walla, represented the taxpayer, while at each of the subsequent conferences Mr. Poe appeared alone.

The issue in the case is the amount, if any, of the deduction to which the taxpayer is entitled for charitable, public, religious, educational, etc., bequests.

As the result of the conferences so held the taxpayer has submitted a signed form 890, waiver of restrictions against immediate assessment and collection of deficiency in estate tax, in the amount of \$21,417.55 as determined by the Internal Revenue

Revenue Agent in Charge. This amount was computed on the basis of a tentative allowance of the credit provided for in section 301 (c) of the Revenue Act of 1926 as amended, for Washington State Inheritance Tax, subject to proof of payment thereof. It appears that determination of liability of the estate for State Inheritance Tax is being deferred pending final determination of liability for Federal estate tax. [Marginal Notation: Charity disallowed.]

It is understood to be the purpose of the taxpayer to pay the amount of the deficiency, together with interest thereon as provided by law and, in due course, to file a claim for refund of all or a portion of the amount paid.

WALTER W. BOND

Assistant Technical Advisor.

[Endorsed]: Filed 2/3/42

DEFENDANTS' EXHIBIT B

(Cut)

United States of America
Treasury Department
Washington

January 29, 1942.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of

Waiver of Restrictions Against Immediate Assessment and Collection of Deficiency in Estate Tax in the sum of \$21,417.55, dated December 12, 1939, filed by Estate of George T. Welch, Baker-Boyer National Bank of Walla Walla, Executor, Walla Walla, Washington, on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury.

[Seal]

F. A. BIRGFELD,

Chief Clerk, Treasury
Department.

MW WWB Amr BM SSF JPW H

C-PD:TS

S:WWB

In re: Estate of George T. Welch Baker-Boyer National Bank of Walla Walla, Executor, Walla Walla, Washington

Waiver Of Restrictions Against Immediate Assessment And Collection of Deficiency in Estate Tax

Received Dec. 29, 1939, Technical Staff Pacific Division Seattle Office.

MT-ET-

District of

Pursuant to the provisions of section 308(d) of the Revenue Act of 1926, the undersigned executor or administrator of the estate of George T.

Welch, Deceased, waives the restrictions provided in section 308(a) of the Revenue Act of 1926, and consents to the assessment and collection of a deficiency in estate tax in the sum of \$21,417.55, together with interest thereon as provided by law.

On or about October 31, 1939, the Collector of Internal Revenue, Washington District, was given by the undersigned a check for \$8,452.46 in payment of an expected deficiency in an estate tax of \$7845.29 and interest amounting to \$609.17.

This waiver is signed upon the understanding that the Collection shall credit the said payment on the said deficiency in estate tax of \$21,417.55.

Assessment Section Sales Tax Division

Date Waiver Checked 1-15-40. Date of Death
4-15-37. Add'l Int. Assessed \$. List.
Page. Line. Clerk (Illegible).

Assessment Section Sales Tax Division

Date Waiver checked 2-16-40. Date of Death
4-15-37. Add'l Int. Assessed \$. List.
Page. Line. Clerk (Illegible).

[Stamped] Bureau Record.

Estate of George T. Welch Baker-Boyer National
Bank of Walla Walla, Executor

By: N. A. DAVIS, Vice President
(Executor or administrator)

Date December 12, 1939. Walla Walla, Wash.
(Address)

Note.—This waiver does not extend the statute of limitations for refund or assessment of tax, and is

not an agreement as provided under section 606 of the Revenue Act of 1928. The submission of the waiver will not prejudice the right to file a claim for refund of any portion of the tax, but will expedite the settlement of the case and will reduce the accumulation of interest, as the regular interest period terminates 30 days after the filing of the waiver or on the date of assessment, whichever is earlier.

[Endorsed]: Filed 2-3-42.

Mr. Winter: The Defendants rest, Your Honor.

The Court: Is there any rebuttal?

Mr. Sherwood: None, Your Honor.

The Court: Is there any reason you should not present written argument and later, briefly, oral argument on the point?

How much time would you like for your written argument?

Mr. Poe: Twenty days—would that be too many?

Mr. Winter: That is satisfactory with me, Your Honor.

The Court: Mr. Poe twenty days and twenty days by Mr. Winter.

Counsel for plaintiff may have twenty days in which to serve and furnish the Court with the opening written argument; the Government may have until forty days from now, in which to serve and furnish the Court with its answering written argument, and Counsel for plaintiff may have

until forty-five days from today in which to serve and furnish the Court with written reply argument. Ten days after plaintiff's reply written argument has been furnished to the Court, either party may, on the first Monday in Seattle thereafter the Court is present, request the Court to fix the time for oral argument, each side being entitled to thirty minutes oral argument and such additional oral argument as the Court may request. [59]

In other words, I have to listen to you for thirty minutes a side. I may desire to hear for you much more extensively. Is that satisfactory, Gentlemen?

Counsel: Yes, Your Honor.

(Adjournment)

[Endorsed]: Filed Feb. 24, 1942. [60]

[Endorsed]: No. 10409. United States Circuit Court of Appeals for the Ninth Circuit. Thor W. Henricksen, formerly Acting Collector of Internal Revenue for the District of Washington, and Clark Squire, Collector of Internal Revenue for the District of Washington, Appellants, vs. Baker-Boyer National Bank, a corporation, Executor of the Estate of George T. Welch, deceased, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

Filed April 26, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No 10409

THOR W. HENRICKSEN, formerly Acting Col-
lector of Internal Revenue for the District of
Washington; and CLARK SQUIRE, Collec-
tor of Internal Revenue for the District of
Washington,

Appellants,

vs.

BAKER-BOYER NATIONAL BANK, a corpora-
tion, executor of the estate of GEORGE T.
WELCH, deceased,

Appellee.

STIPULATION FOR DESIGNATION OF
RECORD FOR PRINTING

Comes now the appellants and the appellee,
through their respective attorneys, and hereby des-
ignate the entire transcript of record, as prepared
and certified by the Clerk of the United States Dis-
trict Court for the District of Washington, as nec-
essary for consideration of this appeal and the
whole thereof be printed except all of the original
exhibits which are transmitted to be available to the
Court for inspection, and application is therefore
made for such inspection without printing.

J. CHAS. DENNIS,

United States Attorney.

HARRY SAGER,

Assistant United States

Attorney.

THOMAS R. WINTER,

Special Assistant to the Chief
Counsel, Bureau of Internal
Revenue.

Attorneys for Appellants.

BURNS POE

MARVIN EVANS

Attorneys for Appellee.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, March 27, 1943. Judson W. Shorett, Clerk, by E.R., Deputy.

[Endorsed]: Filed April 26, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS AND FURTHER
DESIGNATION OF RECORD TO BE
PRINTED

Comes now the appellants, Thor W. Henricksen, formerly Acting Collector of Internal Revenue for the District of Washington, and Clark Squire, Collector of Internal Revenue for the District of Washington, in compliance with Rule 19(6) of the Ninth Circuit Court Rules and state that they intend to rely on the following points:

1. The decision of the Superior Court of the County of Walla Walla, of the State of Washington, in the suit instituted by the executor against

the Inheritance Tax and Escheat Division of the State of Washington, is not binding upon the Federal courts, nor the defendants. Furthermore, such decision is contrary to the law of the State of Washington, as laid down by its highest court.

2. The stipulation entered into between the executor and the widow and filed in the Probate Court that the trustee should take immediately, and that she was entitled to a life estate only, is not binding on the Federal courts nor the defendants.

3. Under the laws of the State of Washington, the will bequeathed to the widow a life estate plus. She had the right to use both the corpus and the income of the estate during her life time.

4. The remainders to charity cannot be valued with any degree of certainty, as the will provides that "no limitation" is placed upon the widow with respect to the estate involved, and the District Court erred in not so holding and determining.

Appellants further designate this statement of points to be printed in the record on appeal.

Dated this 17 day of April, 1943.

J. CHARLES DENNIS,

United States Attorney.

HARRY SAGER,

Assistant United States
Attorney.

THOMAS R. WINTER,

Special Assistant to the Chief
Counsel, Bureau of Internal
Revenue.

Attorneys for Appellants.

United States of America,
Western District of Washington—ss.

Due and legal service of the within Statement of Points and Further Designation of Record to be Printed is hereby admitted and accepted within the State and Western District of Washington, on the 17 day of April, 1943, by receiving a true and correct copy of the original thereof.

BURNS POE

Tacoma

MARVIN EVANS

CAMERON SHERWOOD

Attorneys for Appellee.

[Endorsed]: Filed May 19, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER THAT CERTAIN EXHIBITS NEED
NOT BE PRINTED

Good cause therefor appearing, It Is Ordered
that the following original exhibits

Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

Defendant Exhibits: G and M

need not be reproduced in the printed transcript
of record, but may be referred to by counsel in their
briefs and oral argument, and considered by this
Court in their original form.

CURTIS D. WILBUR

Senior United States Circuit
Judge.

Dated: San Francisco, Calif., May 21, 1943.

[Endorsed]: Filed May 21, 1943, Paul O'Brien,
Clerk.

